United States Court of Appeals for the Second Circuit



BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS—SECOND CIRCUIT UNITED STATES COURTHOUSE, FOLEY SQUARE, NEW YORK

76-7024

MARK RICHARD EDELSTEIN.

Plaintiff-Appellant,

-against-

NEW YORK TELEPHONE COMPANY (and) C.W.A. LOCAL 1104,

Defendants-Appellees.

C. A. Temp. No. T-6141;

Civil Appeal Docket No. 76-7014.

#5

BRIEF

To:

The Clerk of the Court United States Court of Appeals—Second Circuit United States Courthouse, Foley Square New York, New York 18687

The New York Telephone Company 1095 Avenue of the Americae New York, New York 10036

Communications workers of America AFL-CIO Local 1104 6981 Jaricho Turnyike Sypsset, L.I., New York 11791

Hork R. Edelotein 1862 Leonard Lane Hanniek, L.I., New York 11566



Please take notice that the Plaintiff-Appellant, Mark Richard Edelstein, is hereby appealing each and every part of a Judgment of the United States District Court for the Eastern District of New York entered on July 30, 1975, by the honorable Jock Weinstein. Please take further notice that a "NUTICE OF APPEAL" was filed in the United States District Court, Eastern District of New York, on August 19, 1975, within thirty (30) days of the entry of the Judgment IN connection with the above matter. Wherever possible Plaintiff-Appellant's Appeal is based on imformation supplied by the Official Trial Transcript of July 18, 19, 8 30, 1975, United States Eastern District Court Index Humber 74 C 459, (and) wherever possible Plaintiff—Appellant's Appeal is based in testimony supplied by another person.

BEST COPY AVAILABLE

UNITED STATES COURT OF APPEALS—SECOND CIRCUIT UNITED STATES CONFINIOUSE, FOLEY SQUARE, NEW YORK

MARK RICHARD ESELSTEIN.

Plaintif-Appellant,

-against-

HEW YORK TELEPHONE COMPANY (and) C.W.A. LOCAL 1104,

PETENdants-Appullers.

C. A. Temp. No. T-5141;

Civil Appeal Docket No. 76-7024.

(continued.)

FIRST STATEMENT: Plaintiff As a citizen of the United States Mesiding in the State of New York in the County of Massau and was employed by the Defendant, New York 1973

Telephone Company, from Pebruary '70, and until July 30, when he was forced to resign. During the first week of Pebruary 1970 Plaintiff was employed as a "Lineman" (and) from about the middle of Pebruary 1970, and until July 30, 1978, the Plaintiff was employed as a "Framewor" (and) was employed from about March of 1976, and until July 30, 1973, at the Floral Park Central Office located at 159 Lamell Avenue, Floral Park, Massau County, New York.

SECOND STATEMENT'S Defendant, New York Telephone Company, with offices in the State of New York, is a public Utility which maintains a Telephone and Communications Service. Defendant New York Telephone Company has a Union Africant between itself and Defendant, Communications Workers of America, AFL-CIO, District 1, Local 1104, with offices at 6981 Jerisho Turopike, Symboot, New Yorks and Plaintiff was a newbor of Local 1104 in good-standing from about February of 1910 until the beginning of August of 1973.

THERD STATEMENT: As a "paracleal matter" (and) because of the obvious difference in financial status between the Plaintiff and Defendants, New York Telephone Company 6 C.W.A. Local 1104, the Plaintiff respectfully requested to dispusse with the printing of his appeal papers, and notioned that this Court allow him to appeal "IN FORMA PAUPERIS." On January 15, 1976 Judge Walter R. Hambfield algored the following orders "IT IS HERENV ORDERED THAT MARK R. EDELSTEIN, APPELLANT PRO SE, MAY PROCEED ON SIX TYPEWRITTEN BESEFS AND DISPENSE WITH A PRINTED APPENDIX, THE APPENDIX, HOWEVER, MIST CONTAIN AT LEAST A COPY OF THE DOCKET ENTRIES IN THE DISTRICT COURT AS WELL AS THE FINAL PECISION OF THAT COURT. IT IS FURTHER GROERED THAT THE BRIEFS MAY BE FILED ON OR WEFORE 40 DAYS AFTER APPELLANT RECEIVES THE TRIAL TRANSCRIPT PROM THE EASTERN UNSTRUCT COURT REPORTERS."

FOURTH STATEMENTS BRIEF DESCRIPTION OF MATURE OF CASE

This is a proceeding for danages for holding, denying or attempting to hold on deny or attempting to deprive on otherwise interfering with the transfer, promotion, and advancement of the Plaintiff or otherwise interfering solely on the ground of religion and or sex. The Plaintiff-Appellant charges the Pafendant, Hen York Telephone Comapny, with Sex and Religious discrimination, personal prejudices because of Plaintiff's sex and or religion, unjair employment practices, violations of Title VII. of the Act income as "THE CIVIL RIGHTS ACT OF 1964," of USC, Seation 2000e at seq., providing for injunction and other relief against discrimination in employment. The Defendant Union, Local 1104, is also charged with rejusal to represent the Plaintiff in grievance hearings pertaining to the above charges.

Further, Plaintiff-Appellant prays that prior to 1973 gertain positions assigned to women only were scheduled to work 9 a.m. — 5 p.m., while craft positions assigned to make only were scheduled to work notating shifts. In 1972 the Plaintiff requested a transfer to another position that was assigned permanent day hours so that he could continue his college education julk time evenings. At that time Plaintiff entered into

agreement between kinself and the Defendants, Telephone Company & Union, whereby he would be assigned to a permanent evening shift for a period of one semester at a time so that he could attend coilege jull time days. The Company stipulated in the form of a waitten "PERMANGIT SHIFT AGREEMENT" that this permanent shift was in place of transfer to another position, and that the shift would not be changed during a semester, but apuld be changed between semesters. However the Pajendant, How York Telaphone Company, changed the Plaintiff's shift dualng his Spring Semester of 1973, and direction him to "WHIT SCHOOL OR WHIT THE JOB," thus-eauting the Plaintiff to drap and out classes. It is the Plaintiff's claim that these private agreements made between himself and the Defendants, New York Tetephone Company and C.N.A. Local 1104, for the Summer Semesters of 1972, Fall Semester of 1972, and Spring Semester of 1973, superceded any <u>earlies</u> Collective Bargaining Agreements and that such a shift agreement to allow the Plaintiff to work a permanent shift without trading in place of a transier to another position that did not rotate shifts was, in effect, a "Contract" between himself and the Defendants. Plaintiff allages that this "permanent shift" was changed in the middle of his semester to force his resignation because of his ethnic backgrounds And that in this case such a "Greach of Contract" constitutes Religious Discrimination.

BRIEF DESCRIPTION OF NATURE OF CASE (continued.):

This is also a proceeding for a mandatory Injunction to restore the Plaintiff to his mightful position with the Vejendant, New York Telephone Company, to his ver advancement and position to which he would have been entitled had not the said Desendant untawintly and Ittegatly forced the Plaintiff to resign therefrom Further, this is a proceeding for recovery of damages for certain tuition rejunds which the Plaintlif was entitled to neceive from Defendant, New York Telephone Company, for courses successfully completed at Hessen Community College, from 1970-1972, while the Plaintiff was employed by the Defendant, New York Tetephone Company. The total cost of Plaintiff's fultion payment was one-hundred and ninety-EMMIN five dollars and he was entitled to receive a rejund of ninety-seven dollars and fifty cents (897.50). This is also a proceeding to recover damages against the Dejendants. New York Telephone Company and C.W.A. Local 1104, for illegal and improper susyensions without pay of the said Plaintiff, employee of the Defendant, New York Telephone Company; And with the failure of the Defendant, C.S.A. Local 1904, to provide dequate primmer representation, (and) in ject, not representing the Ptaintlii

at all (" a suspension involving time off to while his transmission; who was on a critical list at Interporage General Hospital. And Finally, this is also a proceeding against the Defendant Union for failure to protect the rights of the Plaintiff as a member of the Defendant Union from the physical harassment, misting fromt, duress, and pressure manipulations by the Company and his fellow Union members.

FIFTH STATEMENT: RESULT

The United States Bistriot Court rendered a Judgment in javor of the Pefendants and against the Plaintiff. Applications of the Pefendants, New York Telephone Company were and C.N.A. Local 1104, for costs and coursel fees all denied.

SINTH STATEMENT: ISSUES PROPOSED TO BE RAISED ON APPEAL

The Issues proposed to be raised on this Appeal include the following:

- a.) Sluss and remarks made against Plaintiff's ethnic background
- b.) Physical harassment including two wire tying incidents by employees of the Befordant, New York Telephone Company, and also by shop stemends who are employed by the Company, and also hold a Union position.
- e.) Plaintij charges the Dejandants, New Yerk Telephone Company and C.W.A. Local 1104, RENGESTANDER COMPANIES WITH Jailure to follow grievance procedures. Dejendant New York Telephone did not discipline it's employees for tying the Plaintij with wire; And the Dejendant imion jailed to take Plaintij's grievance against his jellow employees.

(continued on next page.)

ISSUES PROPOSED TO BE RAISED ON APPEALS

- d.) Defendant Hen York Telephone Company discriminated against Plaintiff in conditions of employment because of his neligion, by assigning the Plaintiff to
 "Permanent Speaker Coverage" (and) and rejusing to instruct him on other phases
 of the Framemen's job. Defendant Telephone Company alassified, Limited, and
 standarded the Plaintiff by singling him out to remain a "Permanent Speaker Han"
 for over three years; And thus formed job alassifications within a job elassification. Plaintiff was not given proper training in Placonnects, How Lines, Changes
 of Tel, Changes of Service, (and) the Defendant Union rejused to represent him is
 such a grievance.
- e.) Plaintiff considers permission to hold a permanent shift (mithout trading) for one semester at a time (ctc.) to be a "Contract," Plaintiff charges that when the Defendant, How York Telephone Company, charged this permanent shift during the middle of his Spring Semester of 1973, that this was a "Breach of Contract," (and) when the Defendant inion failed to represent him in grievance pertaining to the above mentioned breach of contract, that this rejuent to represent him constituted a violation of the

Collective Margaining Agreement between himself (as a Union member) and the Union. 6.) Plaintiff changes the Defendant Telephone Company with WISAPE WORKING COMPITIONS. including numerous headaches and dizzy spells resulting from non-personiption SAFETY GLASSES, which the Vegendant Telephone Company forced Plaintiff to wear---although Dejendant's management employees were aware that Dejendant was required to wear only personiption glasses. These non-personiption glasses caused the Plaintiff to become unconscious on the job on wheat five occasions; And were also the cause of several absences and latenesses. Plaintiff alleges that these absences were medically excused. but that he was put on an "Absence Control Step Program" solely for the purpose of blocking the Plaintiff's transfer or advancement applications because of his religion. Plaintiff also charges the Defendant union with not acting in "good-faith" and failure to represent the Plaintiff in grievence proceedings pertaining to the above mentioned LASUE.

5.) Plaintiff charges that the Defendant assigned him to mak angular Saturdry "N" day assignments almost every meaband for a period of several months during the Spring of 1973s hithough Defendant Telephone Company know this was against the Plaintiff's netligious beliefs. Plaintiff charges that these Saturday "N" day assignments were usually assigned to All employees on a notational basis, (and) that this was a "Pressure Manipulation — with the purpose in mind — to force the Plaintiff to nosign. Plaintiff also

ISSUES PROPOSED TO BE RAISED ON APPEALS

(g. continued.)

charges the Dejendant Union in failure tr represent him in a griewence charging the above mentioned act of discrimination.

- h.) Plaintiff charges the Defendants, New York Tetaphone Company and C.M.A. Local with 1904, violations of the <u>SEHIORITY SYSTEM</u> and faiture to inter the provisions of the Higginbatham Consent Decree and Affirmative Action Plan. Plaintiff charges the Defendant Telephone Company with <u>falsification of Employee-Company records</u> with the purpose of denying Plaintiff transfer or edvancement because of his religions had again, Plaintiff charges the Defendant Union with "Not Acting In Good Faith" and failing to represent the Plaintiff in grievance procedure.
- i.) Plaintiff charges the Defendant Telaphone Company with either not project or delaying the Plaintiff's <u>Tuition Refund Aid</u>. Plaintiff alleges that if he had received these tuition refunds promptly he could have registeered for 15 or 18 credits per semester instead of only taking 9 or 12 credits per semester in 1978 (and) 1975.
- j.) Plaintiff charges the Defandant Telephone Company with MON-PAYMENT OF OVERTIME

Willy, so a "Mensane Hamipulation" to force his resignation because of his religions And Plaintiff changes that although the Defendant Union did represent him in
this particular grievance, they did not take the grievance beyond step one. Plaintiff
alleges that he worked regular overtime hours, as did all other employees in his department, but that he was paid only for overtime hours worked during one week.

k.) Plaintiff Charges the Defendant Telephone Company with four suspensions without

pay (totaling ten days) draing the Spainy of 1975; (On on about March, April, May, June, and July, 1973). Plaintiff charges the Defendant Union with inadequate representation for three of the suspensions, and no representation at all for one of the suspensions.

1.) Plaintiff charges the Peferdant Telephone Company with a <u>FORCED RESIGNATION</u> and charges the Peferdant Union with failure to represent the Plaintiff in grievance pertaining to any and all issues that might assist Plaintiff in petting his job back.

SEVENTH STATEMENT:

PROCEDURE AND JURISPICTION (continued on following page.)

SEVENTH STATEMENT: PROCEDURE AND JURISDICTION

A complaint against the New York Telephone Company and C.W.A. Local 1104 charging discrimination in employment because of Plaintiff's Sex and or Religion was filed with the Equal Employment Opportunity Commission on or about August 8, 1978. On or about February and or the beginning of March of 1974, Plaintiff requested a "RIGHT TO SIE LETTER" from the Equal Employment Opportunity Commission, and such a "Right to Sue Letter" dated March 12, 1974, was accrived by the Plaintliff on or about March 18, 1974. Jurisdiction of the United States District Court, Bastern District of New York, was invoked pursuent to 28 USC, Sections 1331, 20089

On April 15, 1974, Nathan Edelstein filed a "NOTICE OF APPEARANCE" for the Plaintiff And before I continue, let the record show that Nathan Edelstein, Esq. and Levis Edelstein, Esq., of counsel for Plaintiff from April 15, 1974, and until July 30, 1975, having the same last name are not related to the Plaintiff — No family relationship at all. (At this time I would also like to explain the the U. S. Second Circuit Court of Appeals that some time on or about the and of April of 1974

Plaintiff's etterney also requested a "Right To Sue Lett'r" -and- a second "Right To Sue Letter was sent to Plaintiff's attorney on or about June 6, 1974.)

At this time I ask that the Court please direct their attention to the U.S. District Court Official Trial Transcript: page 26 - Edelstein-direct - Line 8

By in. Nathan Edelstein: "At this time, your Honor, I would like to submit the Right to Sue from the EEOC, which should quall any matter of legality. To you want to see this?

in. Schelers"I have no objection. I have seen them."

in. Ostains "no objection."

in. Nathan Edelstein: "I submit this in two letters, the Right to Suc. I also respectfully request that this Court please direct its' attention to the bottom of page 89 of the same U.S. District Court Trial Transcript -- line 10: by Mr. Nathan Edelstein:

Q. "Mr. Edelstein, may I show you Plaintiff's Exhibit 8 and ask you to look at an application (page 90) dated August the 8th and another dated Exptember 11th, 1973, is which there is a stump, EEOC, September 11th, and tell us what the difference of the two applications, if there is any.

A. Edelstein - direct - page 40 - line 5: "The first page is part of the original

(page 8.)

SEVENTH STATEMENT: PROCESURE AND JURISSICTION - (continued.)

Edelstein - direct - continued - page 40 - line 61 complaint which is the first filling, August 8th of 1973. And the portion with the Wamp, September 11th, is one of the occasions where I went into the EEOC to add to the original complaint at their request."

At this time I ask that the Court please direct its' attention to Mr. Scheier's objection that this was a "premature suit." I ask that the Court please refer to the U.S. District Court Triat Transcript - Last line on page 27 - and first 6 lines - page 28.

in. Scheiers "The night to Sue latter was issued after the suit was commenced. And to my uniquiations there may not have been more than 174 days which passed between the filing of the charge with EEOC and the commencement of the action. And the statute specifies 180 days."

PLAINTIFF PRAYS THAT MR. SCHETER'S "CALCULATIONS" WERE INACCURATE. Both dates in question, August 8, 1975, and September 11, 1975, when Plaintiff's changes were filed with EEOC, are considerably beyond the 180 day statute necessary for commencing an action in Federal Court. Further, the original "Right to Suc" tetter dated March 12, 1974,

was received price to associately the action, (and) in fact, Plaintiff was required to prosent the March 12, 1974 "Right to Sue" latter to the Clerk of the United States Wistriat Court in order to associate an action. (If this Court so requests, Plaintiff will produce photo copies of the two "Right to Sue" letters.)

And finally, may I please ask that this Court refer to the same transcript, page 17 - Edelstein - direct - lines 7 & 8.

By Mr. Ostrins Twe stipulate he went to the Hew York State Commission."

PROCEEDINGS BEFORE TRIAL:

- 1.) On on about the end of June or the beginning of July of 1974 Plaintiff's attorney received the first set of Interrogatories of Defendant New York Telephone Company to be answered by Plaintiff.
- 2.) Plaintiff's answers to Defendanth Interrogatories were verified on or about the end of August of 1974.
- 5.) Plaintiff's Interrogatories to Defendant(s) Exact dates unknown to Ptaintiff.
- 4.) On an about September of 1974 an AMENDED COMPLAINT was filed by Hathan Edelstein for the Pladottiff.
- 5.) Res Civil Doubet 74 C 489 -- Order parmitting Plaintlif to Amend Complaint 18-1-74.
- 6.) Plaintiff received Pajeminut's Internogatories to his Amended Complaint on or about Hovember 16, 1974.

SEVENTH STATEMENT: PROCEDURE AND JURISDICTION - (continued.)

EXAMINATIONS BEFORE TRIALS by Dejendants

9 / 5 / 74 by C.W.A.

10 / 7 / 74 by C.W.A.

10 / 7 / 14 by Teles.

10 / 29 / 74 by Teles.

1 / 10 / 75 by Yelco.

Trial was held in the United States District Court, Eastern District of New York, on July 28, 29, and 30, 1975; And on July 30, 1975 the Court rendered a Decision that the Plaintiff take nothing and the complaint be dismissed without costs.

A timely Appeal of each and every part of that Judgment was filed on August 19, 1975, invoking JURISVICTION OF THIS COURT.

PLAINTIFF'S CIVIL APPEAL PRE-ARGUMENT STATEMENT was delivered "in person" to the Clark of the Court and counsel for Defamilants. Plaintiff's Civil Appeal Pre-Argument Statement was also delivered by certified mail (return receipt requested) to the U.S. Becond Circuit Court of Appeal (and) to counsel for Defendants, New York Telephone

Company and C.W.A. Local 1104, on or about September 8th, 1975 — within ten (10) days after Plaintiff filed his "Notice of Appeal."

REA PLAINTIFF'S RECORD OF TRANSCRIPT INFORMATION

- 1/3/15: Transcript Information form "1" teft with He. Susan Heron to give to Harry Rapaport.
- 9/5/75: Deposit of 6980.00, estimated cost of preparing transcript for Appeal, given to Harry Rapaport, Official Court Reporter.
- Letter dated 11/14/75: Harry Repeport to Arthur From, relief reporter for the afternoon of July 30, 1975.
- January 5, 1976; Letter from Harry Rapaport (certified mail) mailed 1/13/76 (and) received January 14, 1976:

HARRY Represent was "unsuccessful in obtaining the balance of minutes from relief reporter."

1/16/76: Letter -- EPELSTEIN to ARTHUR FROOM.

Saturday, January 14, 1976: Collect call from Froom.

- Honday, January 16, 1976: Letter and two-hundred and fifty dollar (\$250.00) money order mailed to Arthur From.
- Letter: May 17, 1976 -- To: Clerk, U. S. Court of Appeals -- to explain delay in receiving second part of Trial Transcript.
- June 30, 1976: From mailed Trial Transcript to Edelstein -- received July 1, 1976.

SEVENTH STATEMENT: PROCEDURE AND JURISDICTION (continued.) RE: CIVIL APPEAL SCHEDULING ORDER # 1

1/16/75: Record on Appeal was certified and sent to the Second Circuit
Court of Appeals.

Furthermore, Plaintiff-Appellant understands that his Appeal Brief must be filed with this Court on or before 8/30/76.

HRISTICTION!

This is a suit in equity authorized and instituted pursuant to Title VII of the Act known as THE CIVIL RIGHTS ACT OF 1964, 42 USC, Section 2000e et.seq., incorporated into THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, Providing for Injunction and other reties against religious and or sexual discrimination in employment (and) unjair employment practices solely because of a person's sex and or religion.

The Jurisdiction of this Count is hereby invoked to secure protection of and to redress deprivation of Ptaintiff-Appellant's rights secured by Title VII of the Aut known as "The Civil Rights Act of 1964," providing for Injunction and other relief---to be determined by this Count.

Furthermore, this suit is also anthonized under the First, Fifth, and Fourteenth Amendments thereby of The United States Constitution.

Plaintiff-Appellant maintains that he has followed all procedure required by law in the above matters And that prior to filing any charges with the Equal Employment Opportunity Commission or any other Government Agency, he first tried to work out the "problems" described in this build but was unable to resolve the "issues" with the Pejendants-Appelless. etc. Plaintiff filed his charges with EEO: on or about August 8, 1975, and supplemented these charges with additional material, at the request of that agency, on on about September 11, 1973, and on other occasions. Plaintiff was also referred by EEOC to the Human Rights Commission (and) to the Hational labor Relations Board, but wasn't able to resolve the issues through either of these agencies. Plaintiff filed a Complaint in Federal District Court on or about Harak 19, 1974; Thus, complying with the Statute of at least 180 days, as outlined in EEOC Literature. Trial was held in Federal District Court on July 18, 29, 6 30, 06 1975 and a decision was rendered on July 30, 1975. etc. A timely Appeal was filed on August 29, 1975, within 30 days of that decision, and all other precedures (and) formalities required by law were followed by Plaintiff-Appellants Thus, Invoking the

Jurisdiction of the Beaond Circuit Court of Appeals.

EIGHTH STATEMENT:

ATTORNEYS FOR PLAINTIFF AND DEFENDANT (S).

PART A.) ATTORNEYS FOR DEFENDANTS-APPELLEES.

George E. Ashley William P. Wilman Saul Scheier

Attorneys for Defendant New York Telephone Company 1895 Avenue of the Americas New York, New York 18836

Cohn, Glickstein, Lukie, Ostrin, & Lubell Actorneys for Defendant C.S.A. Local 1104 1370 Avenue of the Americas New York, New York 10019

PART B.) ATTORNEYS FOR PLAINTIFF-APPELLANT.

Plaintiff-Appellant is appealing <u>Pre-Ses</u>

Plaintiff's address is:

Hark R. Edelstein 1861 Leonard Lane Herrick, L.T., New York 11566 APPEARANCES: July 28, 29, 6 36, 1975, Bejone: The Honorable Jack Meinstein, U.S.P.J.; United States Ristrict Count, Eastern District of How York (Index No. 74 C 489).

Hathan Edelstein, tsq.,
100 Herrick Road
Rockville Center, Hew York, (and)
Louis Edelstein, Esq.,
of coursel,
For the Plaintiff

Saul Sakeien, Esq., 1095 Avenue of the Americas, New York, New York, For the Defendant New York Telaphone Company.

H. Howard Ostrin, Esq., 1370 Avenue of the Americas, New York, New York, For the Defendant C.W.A. Local 1104.

WINTH STATEMENT: Plaintiff-Appellant is hereby filing this written appeal to establish the <u>consistency</u> and <u>credibility</u> of his testimency by applying the cumutative testimenies, declarations, and evidence supplied by the witnesses for the Vefendants, in the July 18, 29, 8 30, 1975 Trial Transcripts, Index No. 74 C 489, taken in the United States Eastern Vistrict Counthonse at Westbury, New York, and which will corroborate the Plaintiff-Appellant's original testimony under cath.

TENTH STATEMENT: Plaintiff-Appellant respectfully wishes to inform this Court that since he lacks "independent resources" he was not able to produce witnesses in Court on to conduct any Examinations Before Trials Whereas the Defendants, NEW YORK TELE-PHONE COMPANY and C.W.A. LOCAL 1104, had the "resources" necessary to conduct five lawish Examinations Before Trial over a time period of several months, (and) were thus able to prolong, postpone, and delay litigation, while depriving the Plaintiff of his very means of existence, this salary income), and thereby depriving the Plaintiff of his very means of existence, this salary income), and thereby depriving the Plaintiff of a "equal opportunity" to prepare his case for trial.

Therefore, Plaintiff-Appellant's Appeal, Pro-Se, will use the testimony supplied in the Federal District Court Official Trial Transcript, Index No. 74 C 439, utilizing INCORPORATION BY REFERENCE of such testimony supplied by Defendants' microsses to verify the CONSISTENCY AND TRISTHENDESS OF HIS PRIOR TESTIMONY and to clarify the numerous acts of ratigious discrimination (and) issues to be outlined in this written Appeal.

ELEVENTH STATEMENT: THE ISSUES TO BE RAISED IN PLAINTIFF-APPELLANT'S WRITTEN APPEAL

ARE AS FOLLOWS:

SECTION 1.) Stars and remarks made against Plaintiff's Religion and Ethnic bashpround

MET TO SLIPES GATHST HIS ETHNIC LACKCRONING BY THE DEFENDANT TELEPHONE THEHEDAMAN S'VILLENDS esployees (and) shop STEMARIES, WHO ARE EMPLOYEES OF THE SE-FENDANT TELEPHONE DOMPANY AND ALSO Wicks of the MION: PLAINTIFF LIEGES THE FOLLOW-ING TO SE THE TRUTH:

by Managament Employees of the Defendant Telephone Company during business hours and while Plaintiff was employed by the Defendant Telephone Company; Romanis made equinot his notigion by other exaftsman during his employment with the Defendant Hem York Telephone Company not corrected by Management Employees of the Defendant Telephone Company; (and) Remarks made by Thop Stemands against the Plaintiff because of his Religion (also) not corrected by management. Further, Plaintiff-Appellant charges the Defendant C.W.A. Local 1104 with not providing adequate representation in respect to this grievance following the Defendant New York Telephone Company's refusal to correct such a situation or condition of employment.

Plaintiff-Appellant alleges that Psfendant Telephone Company's Hanagement employees made remarks spainst Plaintiff's religion in anger, and refused to transfer, upgrade, or advance the Plaintiff to other positions within the Company because of his Ethnic Hackgrounds And (in fact) forced the Plaintiff-Appellant to resign his position with the Pefendant Telephone Company, through hanassment and "Pressure-Hanipulations," (and) when the Plaintiff-Appellant sought assistance from the

Orjandant C.W.A. Local 1104, Defendant's Shop Stewards that him with wire nather than represent him.

ELEVENTH STATEMENT: SECTION I.); PART A.

Plaintiff-Appellant alleges that although Pejendant's mitnesses were reluctant to admit that they made remarks against the Plaintiff-Appellant's Ethnic Background, (on) heard other employees make remarks against the Plaintiff-Appellant's Religious beliefs; they did admit that they heard sture on remarks made against other Ethnic Groups — (and) Plaintiff-Appellant alleges that this <u>eineumstantial evidence</u> shows that remarks <u>could have</u> been made against his Ethnic Background. Further, Plaintiff-Appellant alleges that since this matter mann't presented in Court until about two years after Plaintiff-Appellant's changes were filled with EEOC, that the witnesses could have jargotten who made the remarks (and) which remarks were made.

Plaintiff-Appellant asks that this Court please consider the following testimony as "circumstantial evidence," that remarks were made on occasions against other Ethnic background, by Pajendants' witnesses own admission, and therefore it is possible that employees of the Pajendant Telephone Company, and Shop Steward, who are employees of the Pajendant Telephone Company, and also Officers of the Union, Local 1104, could have, at one time or another, made remarks against the Plaintiff-Appellant's Ethnic background and or Religious beliefs.

July 30, 1975 Bove-Crass -- page 104, from bine 191

- 4.1"How about a person of Irish extraction, have you ever heard him called a might
- A.)"I don't follow."
- 2.) "Have you ever heard Lt?"
- A.] "yes."

July 30, 1975 Michel-Recross -- page 75 from Line 16:

- 2.) "You never heard an Italian catted a wop?"
- A. 1 "Yes."
- Q.) "An Irish, a micht"
- A.1 "Yes."

July 50, 1975 Mouning Session Molinski-Cross -- page 465 from line 21:

- (.) "In your experience in the ten years in the Telephone Company, did you ever hear anybody (page 166) eatl anybody by some ethnic name such as dirty Jew, hike, and so on?"
- A. I"In fun, sir."
- Q.) "Only in junt"
- A.) "Yes, sir."
- Q. 1 "Never seriously!"
- A.) "Heven scalously, sir."

Holinski - Cross (continued) from page 466, Line 31

- Q.) "And when you say it was in fem, that's not supposed to hunt!"
- A.) "It's surposed to be a joke."
- Q.) "You're supposed to take it as a joke?"
- A. 1 "Yes, sin."
- i.) "Bid you ever hear another type of a program used in another type of ethnic, not a Jewish, like Whop! Ever hear that!"
- A.) "Yes, siz."
- Q.) "Inlah Mak?"
- A.) "Yes."
- 2.) "Hever seriously!"
- A.) "Never seriously, sir."

 (page 467 July 30, 1975 Marning Session; Motinski Cross continued.)
- (2.) "Always in funt"
- A. 1 "ALGRES."
- 2.) "Even a fight where people say things like dirty Jew, like when they were angryt"
- A.) "Not that I recall, Lin. I never heard it."
- Q.) "Never once was these a fight in the Telephone Company with a Jew on one end and

a non Jew on the other and remothing our hald about a Just

- A.) "Hughe a loss of democr. Alr."
- Q.) "Was that a jobat"
- A.) "It mean's much to be taken sentently, sin,"
- Q.) "When they are analyt"
- h.) "When they are angry, anything that exact to their wind, they just say. They are not responsible."

WITH RESPECT TO THE ABOVE TESTIMONY OF STANLEY MOLINSKI, CHIEF SHOP STEWARD, PLAINTIFF ALLEGES THE POLLOWING.

- 1) Plaintiff-Appellant was the only Sunish explained in the Florat Park Central Offices
- 1) Stanley Holinshi admitted he heard certain person or persons call another worker by some ethnic name such as dirty Jon, kike, and so one And Plain-Ciff-Appellant alleges that since he was the only Jamish person in that Control Office, it is fair to assume that those remarks were directed to him by some other employee of the Company. (see ans. pg. 466, Lines 5 5 5.)
- 3) Plaintiff-Appailant requested Union representation from Stanley Halinshi on on about -iy of 1973 against workers and two shop stemarks who tind him with wire and passed remarks against his raligion. Halinshi, by his ann admission said (in sakstance), that the men were only "playing around,"

(page 15.)

ELEVENTH STATEMENT: EXITTEN APPEAL (CRES-REPONENCED TO TRIAL TRANSCRIPT)
SECTION I.) SLUES AND MEMARKS PASSED AGAINST PLAINTIFF-APPELLANT'S MELIGION AND
ETHNIC SACKORDING; PART A. (CONCLUSAL)

3) And did not "mean the noments seriously." And (in substance) continued to explain to Plaintiff-Appellant that "Mi grievance against any of his fellow employees would not be processed."

Plaintiji-Appellant asks that this Court please see page 470 of the Federal District Court Official Trial Transcript, from line 5: Nolinshi - Cross - By No. Hallon Edelstein:

- (.) "As a circi stemand—on as a stemand, if one of the persons in the tenion come to you with a galevance against another number of the Union, such as an attenic inivit, much you take funisdiction of that grievance?"
- A.) "It wouldn't be a prievence, six. A prievence is against the Company. 30" not against a follow imployee."
- 5) (sentimed) Plaintiff-Appallent prays that he complained to his Supervisor, the Highel, that Shop Staurads and employees of the Company that him with Frame mine and made nomeths against his notifien white tying him with Frame mine (on on about May of 1975); And Plaintiff-Appallent's Supervisor didn't take any sation to connect this physical horsesment by Plaintiff-Appallent's appearables --- And Shanajara Plaintiff's Shop Staurah, Staulay Helinthi,

eyon request by the Pinintiff-Apparame, and an <u>expension</u> to the above the Pinintiff-Apparament in priormen proceedings pertaining to the above issues (and) by his om admission he did not represent the Pinintiff-Apparament in such a priormen.

Further, the teathness of Pat Hyers, Vian President of C.W.A. Local 1106, issue 301 Herrs - Cross, from time 190) verifies that Holinik should have appresented the Plaintiff-Appellant in Orievance Procedure.

1900 561, from Line 19, by Pat Hyers: "The Union has nothing to do with anybody being tied up on anything tike that. That's a Company responsibility. If somebody is assaulted on the frame and lyage 502)they don't normality it to the Union—they report it to the Union—they report it to the unaugement portion on the Company and the management is responsible as to what goes on at their work toestions. The CHLY WAY THE UNION WOULD RECORD INVOLVED, IT THE COMPANY TOOK NO ACTION.

And Plaintiff-Appallant prays such was the case. PlaintiffAppallant's Supervisor, Hr. Michel, "Look no action on his behalf,"

Plaintiff requested Stanley Holinshi, Chief Shop Stanord, to represent him in a griguences (and) Holinshi, by his our admission loca
above py. 470, from time 5), refused to represent Plaintiff-Appallan
in such a colournes.

(page 16.)

SECTION 1. REMARKS AGAINST PLAINTIFF-APPELLANT'S RELIGIONS R RT A.S AUD. 4

4) Plaintiff-Appellant alleges that his Foreman, from Hanch of 1973 until July 80, 1973, Frank Bove, referred to him as a "Useless Jew Bastard," and on one occasion Plaintiff-Appellant's Supervisor, Burie Hickel, called him a "Damn Jem," (and) bodily ejected Plaintiff-Appellant from his office. etc.

Holinshi, by his om admission, <u>page 467 lines 7 through 17</u>, advised the Plaintiff-Appellant that (in substance), "In. Highet could not be held responsible for what he might say in anger (on) for what he might do in a loss of temper."

Plaintiff-Appellant prays that this was a grievance not against kinian employees, but against a management employee of the Company, a Central Office Supervisors (And) because of a "personal friendship" between himself and the Contral Office Supervisor, Hr. Hichel, the Shop Steward Holinshi refused to represent the Plaintiff-Appellant in a grievance charging Hichel with physical harassment and ratioious discrimination.

further, Fielatifi-Appellant alleges that it. Hehel's "conduct" when

he lost his temper family man't in full control of his families illustrates his "hidden-attitude" temper the Plaintiff-Appellant and his religious ballage.

SECTION 1.) PART 8.

May I please now ask the Court to direct its' attention to the Federal Eastern Wistrick Court Official Trial Transcript, Edelstein - cross- by Mr. Ostrin, page 296, from Line Sp (Mr. Ostrin is <u>sending</u> directly from page 67 of an Enamination Sejone Trial taken on September 5, 1974 by C.M.A. Local 1884.)

item page 196, line 5: by the Ostain: 6,) "To you recall being asked this question, the Edulatein, it begins on line 187 <u>QUESTION</u>: As II understand your statement them, no officer—and by officer I man president, secretary, treatment, vice-president, or any other elected official of Local 1804, including any shop stammats—ever made any <u>UNISTION</u> reference to your religion that you know off"

"AKSHER: That's alght."

On page 549 of the same transeript -- COLLOQUY -- Lines 17 through 20, Nr. Ostrin made a NOTION to the Court that the Plaintiff's case against the Defordant Union be dismissed because, "THE PLAINTIPP NYMBELF HAS CONCEDED IN HIS PRETRIAL DEPOSITION THAT THERE WAS NO DESCRIPTION AGAINST WIN BY THE UNION."

(continued on jottoming page.)

(page 17.)

SECTION 1.1 PART B. (continued.)

In reference to the Ostain's Notion Plaintiff-Appellant respectfully asks this Court to bear the Pollacing arguments

First, Plaintiff-Appellant atlages that the above passage taken from the C.W.A. Local 1104 September 5, 1974 mis quoted "out of context" 4% such a way as to be "misleading." Plaintiff-Appellant believed on September 5, 1974, and still believes to this date, that Mr. Outrin wonded his question in such a way that the word "MALICIOUS" to the Plaintiff-Appellant meant "to malign" (on) "tending to permanently physically injune him." Funther, (Res MR. OSTRIN'S MOTTON, COLLOGIS, PAGE 549), Plaintiff never conceded that there was no discrimination agains? him by the Union. And by their own advisation(s) two Union Shop Stewards conceded that they know of an took part in incidente where the Plaintiff-Appellant was tied with Frame wine by Shop Staumris. And Finally, Plaintiff-Appailant's main charge against the Union is that they rejused to represent him in grieveness against the Company and Company employees who discriminated against the Plaintiff-Appellant because of his religion.

PLEASURE STATE STATE OF THE STA

Plaintiff-townless asks that this towns places and the following scatters of the Federal linetern Ristrict Court Trial Transcript discussing a wise thin think Transcript discussing a wise think the Spring of 1971 as enidence of a prior course of conduct leading up to a second event which coursed in May of 1973; The first trations of the transcript are taken from the Plaintiff's diseast testimony, and are corroborated by the testimony of Defendants' mitnesses. (als.)

Edulatain - direct, from page 17 line & through page 18 line 19:

- h.) "I was an a day shift and I naturned from lunch approximately five to one. Some of the employees started horsing around with we in the bacak room."
- 2.) What did they eventually do to you!"
- h.) "They sted me with a spool of frame wine and inexpendenced me for about a half hour
- E) "Were there any comments being made to you while you were thus---
- A.) White I was tied the workers I remember Jerry Fee mentioning—called me a dam Je and hike And George Hajia and Jimmie O'Connon also took part in this incident.

 And everyons was back from tanck in the break ason and everybody matched while this was going on. And everybody watched and did mething (page 18.) to stop if By Mr. Halhan Edulateins Engage me a moment. (A pause.)
- 2.) "New you said you were tied up with wire for about half an hour?"
- A.) "Ves." |continued on following page.)

ELEVENTH STATEMENT. SECTION 11. WIRE TYING INCIDENTS.

Edulatein — direct — continued from page 18 line 7:

- Q.1 "Could you free yoursalf?"
- A.) "No, I was not able to free myself. I had my coat on and my hands were behind my back."
- is "the finally freed yout"
- A.) "The foremen, Bill Hadden, came out with a mire enters and cut some of the mires many."
- &) "As a result of this invident what did Bill Hadden do?"
- A.) "Informed me he documented me as a lateness for naturning from lunch at 1:30."
- Q.) "Did he do anything to the employees who had caused the incident?"
- A.) "He" (step page 14 time 19.)

continued from page to line 3 through page to line o, Edelstein - Pirects
By Mr. Hathan Edelsteins "These are course of conduct shooing what occurred and leading
up to the May avent which happened in '73 and the most important

WINE TYPE INCOMES .- COUNTROLITED BY THE TESTIMON OF JESSE SEE.

Fen - Sincet - from page 373 line 150 By Hn. Ostrin.

- Q.) "Now, Mr. Fee, do you needl an incident when Mark Edulatein was tied with some wines
- A.) "Was, I do."
- () "Were you involved in that incident!"
- A.1 "Yes."
- & 1 "Anybody else involved in that incident?"
- A.) "Th, a couple of framemen, I can't offiand--"
 (from page \$74.)
- Q.) "Tell the sount what you did, where it happened, how it happened."
- A.) "It was in the Lunch room during lunch hour. We tied him up with wire, just horsing around, and that's about the whole thing." (stop page 374 time 5)

 CHOSS
 Fee NEMBLE inom page 397 time 16: By Mr. Mathan Edulatein.
- is) "When you malked into the lunch room was there anything going on at that line!"
- A.) "As far as what going on?"
- 2.) "As far as the wine tying incident. Was there anything going on at all when you came
 the scenes"
- A.] "I don't think so."

鈕

Stop - Sottom of page 1995 Fee - Cross - By Mr. Hathan Edelstein
397 continued on page 19 of Pinintiff-Appellant's

militar Apparel States.

(page 19.)

Fee-Cross continued from page 398 line 1 through page 598 line 51

- Q.) "Everybedy mas cool, eath, collected? They mere eating lunch, discussing things, the general noise and smoking connect! Hothing was happening!"
- A.) "Nothing out of the ordinary."

suintragrammumumum Fee - Cross page 399 Line 4 through page 399 Line 16.

- E.) "Bid you see then tie hist"
- A.) "Yes."
- (.) "You did, How many men did that?"
- A.) "I would say Le was three guys, four guys."
- 1.1 "the you take part in that?"
- A. I "Yes, I did."

Fee - Cross - page 401 from Line & through Line 18:

- (.) "When your hand touched whatever hand it ime, what did your hand do?"
- A.) "I guess I more or tass hald him down because he was <u>structive</u>."
- Q.) "You were holding him against his will, is that night?"

- (c) This he administrate
- A.) "He was biblisting. I wouldn't say atmosting.
- Q.1 "You just said struggling. Isn't that trust"

 For Oracs page 407 Lines 5, 4, 5 % (and) Lines 11 5 12:
- Q.) "Old you observe anybody putting wire around Mark?"
- A.) "Yes."
- 2.) POLL you take any surns around?
- A.1 "I might have, yes."

Fee - Cross - page 409 Lines & Lineugh Line 11.

- Q.1 "Was hi, quote, hibitaing standing up, I mean strangeling? WAS HE TRYING TO GET OUT OF THE WIRES!"
- 1.1 "Oh, yes."

Fee - Cross - from page 410 line 11 through page 411 line 1.

- (.) "Now how tong was he tied up in your presence!"
- A.) "A couple of minutes maybe."
- (.) "Old you finally uncle hint"
- A.) "160."
- %) "You weren's even these when he was untied! Isn's that appears?"
- A.) "No, I man's."

Fee - Crass - continued from page 411 line 1:

Q.) Who untied him, if you know?"

A.) "Bitt Hadden."

Plaintiff-Appellant allages that although the wire tying insident he has just described occurred some time during the Spring of 1971, and it is time prior to the described occurred of 180 days prior to the date Plaintiff-Appellant filed his charge with EEOC, the above incident is relevant as a pre-event or foundation — to show a "course of conduct" or "actitude," illustrating the following:

- 1) Because Telephone Company management took no staps to discipline or correct the conduct of the eraftsmen who took part in the 1971 wire tying incident, a second wire tying incident occurred on or about May of 1973; Because the employees had no reason to fear disciplinary setting. Thus, by not correcting the first wire tying incident, management automatically took a stand of agreement with (and) encouraging a second wire tying incident to take place at a latter dates [and]
- 2) Following the first wire tying incident in 1971 management rejused to hear Plaintiff-Appellant's golemance -- Thus has tastified to by Pat Myons, Man Providen

of G.M.A. Local 1999 patting the obligation of galerance representation on the shoulders of the Union. The Plaintiff-Appellant requested his Shop Stemans, Johny Fee, represent him in a grievance changing employees who tied him with Frame wine with harassment, and charging employees who make remarks against his religion with <u>hibitaing</u>, Plaintiff-Appellant was not represented in grievance, thus "setting the stage" for what happened in May of 1973 -- when Stanley Notinshi rejused to represent the Plaintiff-Appellant against other Union members.

Plaintiff-Appellant alleges that during the three years he was employed at the Floral Park Central Office he was the <u>only</u> employee ever to be tied with wire on physically assaulted; And that he was tied with wire on two occasions — on or about the Spaing after of 1971 MERMANN April of that year and prior to July (prior to the strike) — and again on or about May of 1973; And Hanagement took no apparent action to correct the conduct of those employees who took part in the wire tying incidents — and the Union rejused to process a grievance pertaining to the above issues.

Plaintiff-Appellant offers the following as correboration to his testimony regarding the second wire tying incident within the 180 day statutory period prior to filing his charge with the Equal Employment Opportunity Commissions

Ipage 21 1

Connehenation of a second wire twing incidents

Fee - Cross - grow page 482 Line 21 through page 485 Line 5.

by Mr. Nathan Edelstein Q.) "Does everyone get tied with wire?"

- A.) "I wouldn't say that."
- Q.) "How many people get tied with wire around there?"
- A.) "There was another fellow we tied up."
- (.) "And that was funny, too, wath't let"
- A. i "Yes."

In reference to the above testimony by Jerry Fee Plaintiff-Appellant mill show in a latter part of this written Appeal that during May of 1975 Fee held a 4 1p.m. shift and Plaintiff-Appellant was an a 8-5p.m. day shift at that time.

Plaintiff-Appellant therefore stipulates that although Fee testified to a second wire incident, he did not actually take part in the second wire tying incident. However, following the second wire tying incident management rejused to take any action to correct the conduct of those employees who took part in the mining of Plaintiff-Appellants And Fee rejused to represent Plaintiff-Appellants pertaining to the mining large.

ELEVENTH STATEMENT -- SECTION 111.

PERSONNENT SPEAKER ASSIGNMENT .- AS AN ACT OF DISCRIMINATION.

Plaintiff-Appellant alleges that he was not given "equal treatment" in all phases of employment including training, job assignments, terms, conditions of employment, work schedules, transfer, or advancement -- because of his assignment to permanent speaker duties. Plaintlif-Appellant (also) alleges that other employees would not "work with him" enuming the Plaintiff-Appellant not to be able to perform job functions requiring more than one worker -- including "cross connection wires" which were run in from the column and switch or horizontal side of the Frame by one worker, to another worker on the pair and cable or verticle side of the Frame. And in reference to Plaintiff-Appellant's fellow employees rejusal to work along side him because of his religion -- rather than correct this situation management assigned him to a "one-man joby" permanent speaker many which Plaintiff-Appoilant claims to have been assigned to for over three years -- while all ether employees at the Fioral Park Frame rotated regularly taking turns on all other jobs including new lines, change of tels, go-ahead orders, and changes of service (etc.); And all other employees were assigned in groups of two. Further, Plaintiff-Appellant claims that on occasions when he had to run a line in for a test deskman, he did these jobs alone while all other employees in his department had a partner or second worker to assist them in numbing in erost-connections. (Correbonation from transcript on following page-)

(page 22.)

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ELEVENTH STATEMENT: SECTION 111.
PERHAMENT SPEAKER WORK ASSIGNATION OF THE PERHAMENT.

Corroboration by Hr. Highels

Hichel - direct - from last line on page 541 through line 4 on page 542:

A.) "These are work evaluations on this page, speaker coverage setts factory. There is a date and time, a date and the foreman's initials, employee always willing to help, at actors."

July 30, 1975 transcript - Afternoon Session - MICHEL - CROSS - By Mr. Edelstein page 14 Linus 7 through 15.

- (.) "How, did there come a time when the -- Bid there come a time when this tour, this jour to ovelve tour that Hr. Edelstein had for this time was discontinued?"
- h.) "Yes, sir, it did."
- Q.) "When was this?"
- A.) "I believe, February on Harch of 1973."

 "At that time the Repair Bureau changed their towns."
- They no longer were open to midnight and they no longer needed a speakerman."
- Q.) "When did you team this."

- A.) "It was a matter of a few days after this. They said we stopped our tour from from to bretve and I said okay."
- MICHEL RECROSS BY NR. NATHAN EDELSTEIN page 51 Lines 5 through 10:
- A.) "This was on 5/13/70, speaker covering satisfactory. Employee is always willing to help the testman and always willing to give help to the other employees."
 page 58 Lines 11 through 13 -- MICHEL RECROSS -- BI MR. MATHAN EVELSTEIN:
- Q.) "So, we have a very good quality about Nark!"
- A.) "Yes."

Pertaining to the above testimony Plaintiff-Appellant alleges that by assigning him to "Permanent Speakar" the Defendant Telephone Company thus limited, classified, and segregated him; And did not give him proper training in any of the other phases of a Frameman's job -- And thereby "singled him out" to form a job classification within a job classification -- And although by Defendant Telephone Company's own admission, Plaintiff-Appellant's work was of a "very good quality," he was not given proper training (and) each and every request by Plaintiff-Appellant for transfer or advancement was denied, partially because he did not receive proper classification and training on his present job assignment.

The Union is also changed with refusal to represent the Plaintlift-Appellant in reference to the above issues of job assignment and training.

ELEVENTH STATEMENT: SECTION IV. PERMANENT SHIFT AGREEMENTS:

Plaintiff-Appellant held a permanent Sam - Sym day shift assignment without having to trade towns from about March of 1970 until about the beginning of 1971; [and] a permanent 4pm - 12pm evening shift without having to trade towns from about March of 1972 until about the middle of March of 1973 -- Plaintiff-Appellant alleges the following in respect to these permanent shift agreements:

Plaintliji-Appellant accepted an offer of employment made by the Pejendant New York Telephone Company on or about the beginning of February of 1979. The Plaintiff accepted a position innorm as "Lineman" (in Hassau County) because the employment office stipulated that because Lineman climb poles they work primarily during day-light hours -- And the Plaintliff-Appellant would thus be able to attend college evenings -- And could eventually advance to a "management position" when he completed his education.

The Plaintlif-Appellant worked as a lineman for one week (and) some time during the middle of February of 1970 he was "downgraded" to "Framewar" and sent to Framewar's

Training School for two weeks on a 4-12pm shift. (This is verified on page 12 of the July 30, 1975 Federal Eastern District Court Trial Transcript, lines 5 through 15.)

Following his 200-week assignment at Frame Training School, Plaintiff-Appellant mas assigned to the Floral Park Central Office -- And soon thereafter on or about the middle of threh of 1970 he enterned into an "agreement" made between himself and the Dejendants, New York Telephone Company and C.N.A. Local 1104, that would enable him to work a permanent shift for one semester at a time, so that he could attend college classes during schedulad off-duty hours.....ALL of the Framemen in Plaintlift's job classification EMMENSURY at the Floral Park Central Office signed and agreed to "conditions" of a "Fernanent Shift Petition" ellowing the plaintiff to be assigned to a permanent day shift -- providing that the other Frameman could still notate and on trade tours with one another in the usual nanner; (And) also stipulating that if the Plaintiff-Appellant's permanent shift should be changed, that such a change in his shift be made between semesters and not during a semester.

(continued on following page.)

These earlier "Permanent Shift Contrasts" enabled the Plaintiff-Appellant to attend Wassau Community College evenings during the following time periods:

Summer Session 1 of 1970 from about June 22 until about July 22;

Summer Session II of 1970 from about July 27 until about August 16;

(and) Fall Semester of 1970 from about September 6 until about January 15.

Plaintlif-Appellant learned that his permanent day shift would be changed on or about some time between the Fall Semester of 1970 and Spring Semester of 1971 -- And this is one of the reasons he couldn't continue his college education at that time. etc.

Plaintlif-Appellant enrolled in "Independent Study" courses for Economics (and)

Business Law on or about the beginning of January of 1971; and these courses were

successfully completed on or about April of 1972.

From July 14, 1971 and until about February 18, 1972 Plaintiff-Appellant remained out-of-work because of a strike; And soon after the strike Plaintiff-Appellant enterned into new shift contracts whereby he was assigned to permanent 4pm - 12pm evening shifts without trading town assignments for a period of one semester at a time -- And with the same stipulation that if for any reason the Company needed to remove Plaintiff-Appellant

from this permanent evening shift, such a change in shift would be made between and not during samesters. These "Permanent Shift Contracts" enabled the Plaintlife-Appellant to attend Hojetra imiversity full time dags during the following time periods:

Summer Session I of 1972 about June 11 until about July 163

Summer Session II of 1972 about July 21 until about August 25;

Fall Semester of 1972 about September 11 until about January 15; (and)

Spring Semester of 1973 from about January 26 until about May 25, 1975.

with regard to the above permanent shift contracts, Plaintiff-Appellant was assigned to permanent shifts for one semester at a time in lieu of accepting his transfer application for "Business Representative," a position that was declared by the Defendant New York Telephone Company to be for momen only paigr to the December 72-- January 1973

Affirmative Action Program (and) January 18, 1973 Algeinbotham Consent Decree.

Furthermore, with regard to Plaintiff-Appellant's numerous requests to be transferred to "Business Representative" prior to 1975, Plaintiff-Appellant alleges the following:

1) Business Representatives are assigned to work 9am - 5pm Honday - Friday which would have enabled the Plaintiff-Appellant to continue college evenings.

- 2) Although the weekly rate of pay for Frameman is slightly higher than that of Business Representative, the Frameman pay is based on a 49 hour week while the Business Representative pay is based on only a 35 hour work week. Thus, the hourly wage would be about the same.
- 3) Further—the Plaintiff-Appellant alleges that his transfer to Business Representative would cartainly MOT be a permanent "lifelong" career; And because of his language in the Telephone Company, exceptionally high tests scores, good work performance, and callege advection, that Business Representative would be a predecessor to a higher paying position including "Special Representative" (and) possible even Communications Consultant.

THE FOLLOWING TESTINONY FROM THE EASTERN PISTRICT COURT TRIAL TRANSCRIPT CORROBORATES PLAINTIFF-APPELLANT'S TESTIMONY REGARDING PERMANENT SKIFT CONTRACTS:

Fee - Direct - by Mr. Octain -- page 572 Lines 13 through 16; page 373 Lines 5-14.

- Q.)"Bid you have anything to do with reference to obtaining a more favorable schedule of work for Mark Edelsteint"
- A.) "Yes, I did."

- Q.) "What did you do?"
- A.) "I wrote up a patition for the men to sign, if they would, if they wouldn't care if Mark had a parmanent shift to help him in his schooling."
- (b) "And how was that petition circulated?"
- A.) "I circulated it myself."
- (.) "And what was the result of the circulation of that petition!"
- h.) "The nesult—that the men did sign it and they gave him the right to have his own shift, more or less."

Correbonation - continued - Wyers - direct - from page 472 line 21 through p. 473 L. 7

- Q.) "And did you ever have any conversations with Hark!"
- A.) "Numerous times."
- Q.) "And was this in person, by phone or house"
- A.) "Primarily by phone."
- (1) "Old he ever come in to see you?"
- A.) "Yes, at least on one occasion and possibly two, but definitely one."

 Wyers direct page 474 lines 9 through 16:
- (continued on following page of written Appeal Brief.)

(page 16.)

tiyers - direct - continued lines 11 through 16:

A.) "I would say it han from about a year and a half to two years to somewheres in 1972, as my memory—as good as my memory would be, sometime after the strike which terminated in February in 1972, on through to when he left the employ of the Telephone Congany."

Hyers - direct - from page 415 bottom line through page 416 line 13:

"And I discussed other problems with Hark, the problem of his towns. He wanted to work evenings and attend school during the day. He wanted to work the four to twelve shift.

I called Ernic Hickel, who is the supervisor for the Floral Park Central Office. I asked Ernic if it was possible for Hark to be on a permanent four to twelve tour as a frameman. And Ernic said, no, we have in rotate the tours accumulations. In the contract, which I was aware of.

But I said what if the people in the office are approached and they were willing to give up their tours?

And Ericle sald, tine."

The following testimeny by in. Michet also consoberates Plaintiff-Appellant's original testimeny regarding permanent shift assignment in place of transfer to Business Representatives <u>AICHEL-RECROSS--July 58th transcript-page</u> of lines 6-10:

- Q.)"I am tolking about a business representative. Isn't it true that that was only for momen at that time!"
- A.) "YEA."

Michel - accross - by the Mathan Edelstein - page 68 lines 15 through 15:

- Q.)"Now, in 1971 did Hark request a transfer on an advancement to a business representa-
- A.) "I believe he did."

Hickel - recross - page 64 Unes 18 through 25:

- Q.) "Did you advise him that he could apply!"
- A.) "I said he would have to write a special request."
- 2.) "Aren't there special forms in the Telephone Company for that?"
- A.] "Ho."
- Q.) "There are none in the Telephone Company for anything like that?"
- A.] "None that I am aware of."
- i.) "Vide't you say there was a tetter here for a garage mechanic!"
- A.) "No. Chat was a jorn after 1972."
- Q.) "AGEGAT"
- A.1 "November 1972."

(page 27.)

Wiehel - recress - continued - page 64 lines 26 8 25:

- Q.1 "Never beforet"
- A.) "No. sir."

Nichet - cross - by Mr. Nathan Edelstein page 16 lines 7 through 21

- Q.) "was the understanding about the job of special representative that it was only for women?"
- A.) "There are various representative jobs and any job is open to male or jemale."
- Q. 1 "How Long has that been!"
- A. 1 "Since the E.O.P. Program."
- Q.) "Hearing what?"
- A. 1 "The Equal Opportunity Employment Program."
- Q. 1 "Do you know when that was ?"
- A.) (No response.)
- Q.) "I's you don't man, don't answer."
- A.) "Late Novembe .. "

"It was something like -
It was somewhere around after the strike.

We review it with everybody."

After the strike -- *1972*

Her Consideration of permanent shift contract by Mr. Michel (conversation between Michel - and - Myers)

MICHEL - DIRECT page 7 Lines 11 Chrough 15

A.) "He (NA. myeas) taked to get Manh Steady evenings and I said, Chopsy, As you know, WE GET MANY REQUESTS, BUT, IF THE FRAME FOREMAN GETS EVERYBODY TO AGREE TO LET HIM TAKE A STRAIGHT TOUR."

with regard to the PERMANENT SHIFT CONTRACT for the SPRING SEMESTER OF 1973

Plaintiff-Appellant alleges under oath that the following is the truths an upgrade to

- 1) That this permanent shift was in tieu of democracies Special Representative on a transfer to Business Representative -- which the Highest advised were for women only.
- 2) Mr. Makel stipulated in writing that this "permanent shift" would be for the entire Spring Semester. from January of 1973 until May of 1975, but that the shift could be changed between semesters if other Framemen objected to it.
- 3) The shift was changed in the shift was changed by Wr. Michel.

(continued on following page of Appeal Brief.)

- 4) Three Framemen were assigned to the 4-lips shift -- And the Plaintlif-Appellant was previously promised that shift so that he could attend college classes during the Spring Semester of 1973. If the "needs of the business" required that one less Framemen work the 4-lips shift -- one of the non-college people should have been assigned to 1-9ps.
- 5) Plaintiff-Appellant altages that this change in permanent shift was a "Pressure Manipulation" by his supervisor to force his resignation because of his religion and / on upgrade or transfer requests to other positions assigned to women only until about the beginning of 1973.
- 6) Plaintiff-Appellant alleges that this change in permanent shift assignment was an Act of Wiscrimination and a Barach of Implied Contract.
- 7) Plaintiff-Appellant charges that a rejusal by the Defendant, C.W.A. Local 1164, to represent him in grievance pertaining to the change in permanent shift assignment constitutes a violation of the Collective Bargaining Agreement.
- 8) And finally, both the change in permanent shift assignment (and) Plaintiff-Appellant's requestly) for grievance representation from the Union occurred within the 160 day

Plaintliff-Appellant asks that this Count please read the following testimony by In. Michal, Central Office Supervisor, correborating the change in Plaintliff-Appellant's permanent 4-12pm shift during Mis Spring Semester of 1973.

MICHEL - RECROSS - page 57 Lines 5 through 23:

- Q) "It was blanch of 1975 because, isn't that the time he changed his shift?"
- A.) "Who changed his shift!"
- Q. | "Frank Bove."
- A.) "In. Sove came and I was directing the shift from one to nine.
 I directed the foremen to change his shift."
- 2.) "When was mank working at that time?"
- h. ! "Four to besive o'clock at that time."
- Q. I "And you changed it to one to nine?"
- A.) "Yes."
- Q.) "You were make that he was taking coitage courses?"
- A.) "I was aware that he was going to school, I was aware that he was going to school, yes."
- Q.) "And, you are ware of some arrangements, that had been made for him to permit him to go there?"

ipage 29.1

MICHEL - RECROSS - continued page 71 lines 9 through 18:

- Q.) "After that shift without notice and without consideration in Harch of 1978, didn't he tell you that the shift would interfere, seriously, with his coilege education?"
- A. 1 "Yes."
- Q. I "What was your sense!"
- A.) "To see if he could swap his tour."
- Q.) "Bidn't you say guit school or guit the job?"
- A.1 "Yes."

Furtherwore, with regard to assignment of work shift schedules the Plaintliff-Appellant Pro-Se alleges the following:

- 1) That he was discriminated against because of his sex by being excluded from on not allowed to transfer to Business Representative prior to 1975 and-on denied advancement to Special Representative during the time period from about the end
- HE December of 1972 through July 30, 1973; And by the Defendant's own admission both of these positions as testified to by Mr. Michel on page 16 lines 7 through 21 were for "momen ands" until the existence of the E.O.P. program followed after the strike (and) after November of 1972.

Plaintlif-Appellant alleges that he requested transfer or advancement to either

- of the above mentioned positions which were assigned to permanent day shifts (and) which would have enabled him to complete his college education full time evening, and advance to "Communications Consultant" which also is assigned to a permanent day shift --- And the Plaintiff-Appellant would thus be able to continue his college decation taxard on H.B.A. Degree and Law Degree (and) eventually advance to the Company's Legal Department.
- 2) Visintiff-Appellant atleges discrimination because of his religion in that Permanent Shift Contracts were in them of job transfer or advancement; And following the change in shift assignment "Pressure Manipulations" in shift assignment were used to attempt to force his resignation. These "Pressure Manipulations" included regular Saturday "H" day assignments almost every week for the months of April, May, and June of 1973 at the direction of the Supervisor Michai knowing all-the-while that such shift assignment was against the Piaintiff-Appellant's religious beliefs. Further, Plaintiff-Appellant alleges that it was the "normal business practice" of the Defendant New York Telephone Company to schedule Framewan to work Saturday on a relational basis.

 [These Saturday assignments will be syntained in more detail in Section IX. of the

ELEVENTH STATEMENT: SECTION V.

FALSIFICATION AND OR IMPROPER DOCUMENTATION OF COMPANY ABSENCE CONTROL PLAN RECORDS:

Plaintiff-Appellant was interviewed for employment with the Defendant New York Telephone Company on or about January 22, 26, 8 28, 1970, (and) at that time he did advise the Dejendant Telephone Company that in 1955 he had surgery to remove a tumor behind the globe of his right eye and to correct a weak muscle. This is correborated in the Plaintiff-Appellant's testimony on page 233 of the Federal Eastern District Court Trial Transcript - Lines 13 through 15 - (and also pages 251 - 253) - that the Plaintiff-Appellant did inform the Defendant Telephone Company of his "eye problem" prior to being employed by the Company.

Edelstein - cross - by in. Scheler - page 133 Lines 13 through 15: Q.) "Could you just read the words again one more time? Read what you said there." A.) "Tumon, night eye, connected age seven."

On or about February 2, 1970, at the advice of the Pejendant Telephone Company, Plaintiff-Appellant visited his own eye doctor, Dr. Norman Stevens, 806 Central, Woodmers, New Yorks And On. Stevens wrote a letter that some day which Plaintlift-Appellant presented to Telephone Company on February 5, 1970. The letter from Dr.

Steven's office, in substance, stated the followings the approximate date and nature of Plaintiff-Appellant's eye operations vision 20/20 left eye — 20/60 right eyes paresis of right lateral rectus — able to do near work but questionable for distances (and) that Plaintiff-Appellant was in satisfactory physical condition to work as a telephone craftsman, but he required only personiption safety glasses. Further, on page 104 of the trial transcript Index No. 74 C 439 (line 21 of the transcript p. 104, reading from employment application) it states:

A.) "It says: Hedical department, 1-3-10"

And Plaintlif-Appellant claims this was the date when he presented the letter from Dr. Stevens to the Defendant Telephone Company (and) the date when Telephone Company's Medical Department approved him for employment.

On page 106 of the Federal District Court transcript lines 7-11 the initials "ANC" were also read from the employment application as approval by Company" that Plaintiff-Appallant be hired as a lineman.

On on about the beginning of February of 1970 the Plaintiff-Appellant was given a pair of personiption raftey glasses by the Defendant Telephone Company (and) with regard to these personiption safety glasses Plaintiff-Appellant alleges the followings (continued on following page.)

ELEVENTH STATESCHT: SECTION V. (FALSIFICATION OF RECORDS).

Plaintiff-Appellant alieges that in 1970 he was the victum of several "pranks" at and near the Floral Park Central Office (and) that these pranks were allowed by management who seemed to take no action to correct the conduct of employees who were playing these pranks on the Plaintiff-Appellant. etc. Further, these pranks included taking the contents of Plaintiff-Appellant's locker, including his tunck, work tools, and safety glasses, and emptying the contents of Plaintiff-Appellant's locker — as is corrobonated in the following testimony:

Fee -cross - page 453 - Lines II through 14 - by Hr. Nothen Edelstein:

- Q.) "What other prants do you do besides the people with wire?"
- A.) "Maybe take their lunch or something like that."

Plaintiff-Appellant alleges that following the <u>locker incident prank</u> his perseription safety glasses were lost and or had disappeared (and) his foreman, Bill Madden, gave the Plaintiff-Appellant another pair of safety glasses to wear until the Company could replace Plaintiff-Appellant's perseription glasses. Plaintiff-Appellant alleges that his foremen told him these new glasses were "plain-glasses".

And that these new glasses were <u>not</u> persoription —— And on several occasions these glasses caused the Plaintliff-Appellant to pass out or become unconscious on the job; (and) not be able to report to work at all for about ten days on or about the time period from about Kench 1970 and until about the Spring of 1971.

On or about the Spring of 1971, about a month on two prior to the strike, the ilest of two wire-twing incidents occurred; And Plaintiff-Appellant's non-personiption classes - which he had been wearing for the past year - were damaged, and again Plaintiff-Appellant requested that the Company replace the glasses with special personiption which the Plaintiff-Appellant required to do his job. Plaintiff-Appellant requested a grievence and his supervisor. Mr. Nichel, replaced the broken classes with a pair of metancycle goggles. And Plaintiff-Appellant alleges that his pay recond will authenticate that for the two months prior to the strike that Plaintiff-Appetlant held a 4-12pm work tour by trading (and) for the 12 month period he held this 4-11,000 work tour on a permanent basis, he did not have headaches or dizzy spells from these goggles and these was no absence. IN FACT, THERE WAS NO ABSENCE FROM THE SPRING OF 1971 UNTIL MARCH OF 1973 -- AND PLAINTIFF-APPELLANT WAS NOT ON STEPS FOR ABSENCE UNTIL 1975 -- AND WITH REGARD TO BEING PUT ON STEPS FOR ABSENCE, HE WAS MOT PUT ON STEPS UNTIL THE SPRING OF 1978 -- AND THE STEPS WERE FOR ASSENCE WHICH OCCURRED IN 1970 WHICH PLAINTIFF-APPELLANT SELVEVES SHOULD ALSO BE "VEDICALLY EXCUSEN."

ELEVENTH STATEMENT: SECTIONS. (FALSIFICATION OF ABSENCE CONTROL RECORDS.)

With regard to the dates when sajety plasses were issued by the Dejendant New York Telephone Company Plaintiff-Appellant alleges the following:

1) After the Spring 1971 wire tying incident, which caused Plaintiff-Appellant's non-personiption sajety glasses to become broken or damaged, he was given <u>Nator</u> Cycle Gougles by Nr. Nichel which he were until the July 14, 1971 strike.

- 2) Plaintiff-Appellant returned to work on or about February 18, 1972, following the seven month strike, and was again asked to wear "plain-glasses" which Plaintiff-Appellant work during the last two weeks of February 1972 and for about the first two weeks of Narch of 1972.
- 3) These "plain glasses" again caused the Plaintlif-Appellant to have headsches and dirry spells on the job -- And he was allowed to wear the goggles again until about Harch of 1975.

Plaintiff-Appellant asks the Court to please MINISTED from the Federal Eastern District Court Transcript the following testimony by Hr. Hickel Corroborating the above dates: HICHEL-RECROSS--from page 58 Line 25 through page 68 Line 4:

- Q.) "And, didn't he say he gets headaches, severe headaches, naus cous headaches, when he was not wearing these glasses?"
- A.) "He may have."
- 2.) "Do you remember Harch 10, 1972 when he was on the speaker covering?"
- A.) "I remember March of 1972. If that was the job assigned to him-"
- Q.) "wasn't there a report that he was found tying on his back unconscious?"
- A.) "He was Lying on his back in the balaony."
- 4.) "He was lying on his back in the baleony asleep."
- is! "I will come to that, wasn't he unconscious?"
- A. | "He was asteep."
- Q.1 "All right. How, lets follow up on that sleep. Did you find him there?"
- A.) "The foreman reported it to me."
- Q.) "You didn't see him!"
- A.) "Not at that time."
- 4.) "Did you see him astrapt"
- A.) "I sav him askeep on the job."
- Q. 1 "At that time!"
- h.) "I don't recall if it was that time or another time."

ELEVENTH STATEMENT: SECTION V. continueds

With regard to Pinintiff-Appellant's claim changing SEX PREJUDICE, by the Defendant New York Telephone Company's own admission, prior to 1975 only women were allowed to become special representatives and or business representatives; And although the Piaintiff-Appellant requested numerous transfers from his foreman during 1970 (and) from in. Michel on or about March of 1971, these transfer requests were denied solely because he was a male. Furthermore, the Plaintiff-Appellant alleges that he was not on steps for absence when these requests were made and the only reason these transfer applications were denied was because he was a male requesting either of two "female jobs." This is correborated by the following testimony: MICHEL-RECROSS--page 61 lines from line 20.

- Q.) "At that time, in 1972, before November of 1972, isn't is ____ nat only women were being hired as business representatives?"
- A.) "I believe so, yes."

With regard to the above upgrade and transfer letters Plaintiff-Appellant alleges that he requested to become a business or special representative because

of the headaches and dissy spells caused by non personiption glasses (and) either of the two positions Plaintiff-Appellant was recking were not required to wear safety glasses --- These were clerical positions where there is no potential drager to the eyes.

On on about some time in Harch of 1973 Plaintlif-Appellant's shift was changed and again the Coopany requested he wear "plain plasses." And at that time Plaintiff-Appellant submitted written Company applications for special representative and business representative, and a latter to his supervisor, Mr. Michel, requesting Special Assessment for his college education and a recommendation to be advanced to Communications Consultant. Plaintiff-Appellant advised Mr. Michel that he was requesting transfer and or advancement to any of the three above mentioned positions because they were assigned to permanent non-rotational day hours (and) because wearing of sajety glasses was not required. Further, Plaintlib-Appellant was not on any Absence Control Step when these applications were originally made. (Plaintiff-Appellant alleges that Nr. Nichel accepted these applications on or about the end of Harch on beginning of April 1973 -- And asked the Plaintlif-Appellant to wear "plain glasses" While his folder was reviewed and the applications were being processed.)

Plaintiff-Appellant advised his supervisor, in. Wahel, again that he was getting severe headaches at home and on the job, and he believed them to be caused by the "plain glasses." And this time in. Michel phoned Hempstrad to "find out" if the Piaintiff-Appellant really had an eye astigmatism or not --- and soon thereafter the Plaintiff-Appellant was sent to a Company Eye Doctor and issued another pair of personiption plasses at Company expense. However, Plaintiff-Appellant claims that these glasses were also broken during a second mine tying incident on or about May of 1973. Plaintiff-Appellant wore either "plain glasses" or "motor cycle goggles" thereafter with hie test day with the Company-which was July 30, 1973. Plaintiff-Appellant was given another form on or about the last week of 1124 of 1973 but was told by his supervisor, in. Hickel, that he would have to pay about ninety dollars for the examination and the glasses. Plaintiff-Appellant agreed to purchase a new pair of glasses under the following condition:

First, that he be allowed to visit his own Eye Doctor in Woodmere either during off-hours (or) that he be given a reasonable amount of time off to drive to and from Woodmare and allowed a reasonable time for an examination. Plaintiff-Appellant

also admised the Michel at this time that Dr. Stevens might have to "put drops in his eyes" for part of the examination and if so he might require more than two hours offs (possibly an entire afternoon).

Secondly, the Plaintiff-Appellant explained to Nn. Michel that the first pair of personiption safety glasses issued by the Company was removed from his tocker on or about Narch of 1970; And a replaced pair of "plain glasses" was broken by other employers during a wire tying on or about the Spaing of 1971; And the second pair of personiption glasses given to him by the Company on or about April of 1973 was also broken when employers of the Company tied him again with Frame wire. THER FORE, Plaintiff-Appellant agreed to pay for the new pair of personiption safety glasses under the condition that Nr. Nichel hear a grievance for any monies paid by the Plaintiff-Appellant to Dr. Stevens (or) any other Eye Doctor (and) that Nr. Nichel hear a grievance for the eye examination.

*** Hicket would only allow the Plaintiff-Appellant two hours off to drive from Floral Park to woodmere, have the eye examination, and ruturn to Floral Park; (and) these "two hours" would be Plaintiff-Appellant's tuneh hour and one hour without pay. The Plaintiff-Appellant advised in. Hicket that it would take him about a full hour to drive from Floral Park to woodmere and at least the same time to return—and he didn't know how long the age examination might take. And that he could not go for the

(page 35.)

eye examination that same day unless in. Michel would allow someone cise to drive him to Sr. Steven's office, perhaps one of the foremen or another frameman, because the "plain glasses" he was wearing that day were causing him to have a severe head-ache and he was fearful of driving in heavy traffic or long distances.

Plaintiff-Appellant asks that the Court please read the following parts of the Federal Eastern District Court Trial Transcript Index No. 14 C 439, conroborating the above dates and or events: MICHEL-RECRUSS page 58 lines 9 through 241

- Q.1 "tild you ever find him without those glasses on?"
- A. 1 "Yes."
- Q.) "Havy times !"
- A.) "Several times."
- (.) "Several times?"
- A.) "Yes."
- Q.1 "Did you speak to him about it?"
- A. I "Yes."
- 2.1 "You did?"
- A.) "Yes." "I spoke to him and the foremen spoke to him."
- Q.) Didn't he cay they were broken and that he couldn't wear them?"
- A. "Yes."

MICHEL - RECROSS -- page 56 Line 8 through page 57 Line 14:

- Q.) "In. Nichel, are you make of the fact THAT THERE IS a difference between plain glasses and astigmetism glasses?"
- A.) "Yea."
- Q.) "Are you aware what happens to a person who has astignatism and does not wear the correct glasses?"

MR. SCHETER: "I object."

HR. EVELSTEIN: "I am asking if he is aware."

THE WITNESS: "I understand that they have to wear prescribed glasses. I know they have to wear a perscription of one sort or another."

- Q.) "When did you give him this order for glasses?"
- A.) "I notice the application said July 25, 1973. He had a pair of glasses before that time and I was constantly asking him to put his glasses on."
- (.) "When did you find our that he had astignations"
- A. ! "Just palon to that form."
- g. 1 "Which?"
- A. I "THE ONE BEFORE THAT."
- L) "How lengt"
- A.) "A HONTH OR THE BEFORE THAT."

ELEVENTH STATEMENT: SECTION V. (FALSIFICATION OF ABSENCE CONTROL RECORDS.)

Plaintiff-Appellant alleges that except for absences caused from being forced by the Pefendant Telephone Company to wear nonpersoription safety glasses he had almost no absences (and) furthermore, most of the absences pertaining to headaches and dizziness were during 1970. Plaintiff-Appellant alleges that Mr. Mickel and 32 Plaintiff-Appellant's framen documented him on "Step 5" with the purpose of not transferring him to business representative or advancing him to Special Representative and or Communications Consultant because of his sex and or religion And with regard to the above applications, Plaintiff-Appellant alleges he wasn't documented on any step until such applications were submitted to Mr. Michel some time during the Spring of 1975 following the change in Plaintiff-Appellant's personnent 4-11ym shift.

The following lestimony corroborates that the above applications which the Plaintiff-Appellant submitted to his supervisor were not processed through the Company — nor did Plaintiff-Appellant learn of this until about June '13. WICHEL — CROSS from page 21 line 10 through page 21 line 19:

Q.) What happened with these forms, were they processed through the Company?"

- A.) "They were both netweed."
- Q.) "To your"
- A.) "To me for neview with him."
- Q.) "And--"
 We. EPELSTEIN: "I didn't hear him."

 THE WITHESS: "It was returned to me to be reviewed with him."

 "I was the foremen who was rejecting or accepting."
- (.) "Bld you review it with him."
- A.) "No. I don't recall ever reviseing it with Mr. Edelstein."
- Q.) When they say returned to you -- Is there on indication for the basis of the upgrade and transfer?
- A.) "Yes, sin. Yes, sin, there is. On the form attached to it, on this particular one, it says unsatisfactory. Quality of works "EMPLOYEE IS NOT QUALIFIED FOR FOLLOWINGS IMSATISFACTTORY ATTENDING PRESENT JOS, NOT ACCEPTABLE."

Plaintiff-Appellant believed there were extenuating circumstances pertaining to the alteged absences and improper documentation of the Company's
Absence Control Records by wanagement-And Plaintiff-Appellant Requested
his shop stoward, Jerry Fee, to represent him in such a grievance. However,
ha. Fee rejused claiming he could only represent Plaintiff-Appellant in
a grievance against the Company -- never against another Union member.

ELEVENTH STATEMENT: SECTION V. (FALSIFICATION OF ABSENCE CONTROL RECORDS.)

in or about April or May of 1973 the Plaintiff-Appellant also presented another wexade and transfer application to his supervisor, in. Nichel, for installer in the Hanhattan area -- And at this time Plaintiff-Appellant tearned (from his supervisor) that he was only allowed to submit two upgrade and transfer applications at a time to the upgrade computer. Plaintiff-Appellant submitted the Installer application, and withdrew the application for Business Representative (and) at the same time he axended his original application for Special Representative to read "If special representative was not available he would also consider business representative." 12 was at this time, April or May of 1973, that the Plaintiff-Appellant learned that in. Michel had documented him on "Step 5" (and) did not submit his applications to the Company upgrade computer. Plaintiff-Appellant requested his shop stemend, Jerry Fee, to represent him in the following galevances pertaining to these approach and transfer applications:

1) When in. Hickel formarded Piaintiff-Appellant's upgrade and transfer applications to the "upgrade and Transfer Department" of the Company Plaintiff-Appellant's applications did not include the joliming records (a) themed of employee's college education, (b) test scores including ninety three per cent in an Instalter-Lineman exam taken by Flaintiff-Appellant in 1978 (and) a ninety seven per cent score in a Communication Consultant Exam taken by the Plaintiff-Appellant on in about April '73, and (a) the work ratings for Plaintiff-Appellant's present job -- All of which being aither "satisfactory" and in some cases "very good" or "outstanding."

2) Plaintiff-Appellant alleged that Hr. Hichel denied him upgrade or transfer by documenting him on "Step 5" for absences And that these absences occurred prior to Harch of 1971 — more than two years prior to then the upgrade and transfer application were being submitted — and that these absences should be "Hedically Excused." The Plaintiff-Appellant requested that Hr. Fee represent him and corresponds the toeker incident and wire incidently showing that there were extensisting circumstances for any absence or lateness — and that most of the absence in question was prior to the 1971 strike, (and) following the strike the Pirintiff-Appellant was not on any absence central step (and) held a 4-11pm shift for over a year during 1/72 8 1973 with no absence or lateness — as was verified by Plaintiff-Appellant's pay recervis.

Plaintiff-Appellant alleges that fee rejused to represent him because his grievances involved the locker incident of 1970, the wine tring incident(s), (and) other thick members, had that this is correbonated in the following testion my;

(page \$8.)

ELEVENTH STATEMENT: SECTION V. (FALSIFICATION OF ARSENCE CONTROL RECORDS.)

Fee - cross - page 383: (Lines 11 through 18.)

- Q.) "And it's your function to represent the men who belong to the Union as against the Company. Is that right?"
- A.) "That's true."
- Q.) "And your loyalties are with the ment"
- A.) "that's true."
- E. I "And you always think that way?"
- A.) "Yes, I de."

Plaintiff-Appellant also presented a grievance to Pat Hyers, Vice President of C.W.A. Local 1704, charging that he was bypassed for promotion or transfers And this is corroborated in the following testimony:

WERS -- CROSS -- from page 507 lines lines 12-22; and page 508 lines 1-4:

- (.) "How, you spoke about the Company having a policy of anyone on Step 4 or 5; % course, no advancement. Is that correct!"
- A.) "No, six. That's in the absence control plan which the company has introduced.

- 6.1 "lies the liston approved that!"
- A.) "No sia, definitely not."
- Q.) "So that even if an employee is on Step 4 or 5, it would be your duty to continue to unge upon the Company in the advancement program regardless of Step?"
- A.) "IF THE INDIVIDUAL WAS BYPASSED FOR AN UPGRADE BECAUSE THE COMPANY SAID HE WAS ON THE FOURTH STEP OF THE ABSENCE CONTROL PROGRAM, WE WOULD PUT IT IN THE GRIEVANCE PROCEDURE." (Plaintiff-Appellant alleges that his shop stemand forwarded a galavance to Hr. Wyers pertaining to the above issues and Plaintiff-Appellant also contacts: Hr. Wyers by phone, and that this grievance was naver followed up by Wyers.)

WERS -- CROSS -- page 511 Lines & through 14; page 511 Line 22 Chrough page 512 Line12:

- () "Is, for example, an employee is refused permission to file, in your language, to make a grievance, to a shop stemard, do you have the authority to take such a grievance?"
- A.) "You bet your-yes, sir, I do."
- 2.) "Ald he ever approach you with a complaint which amounted to a grievence?"
- Q.) "He never spoke to you about a grievance as jailure to worade, never?"
- A.) "Not as a gricowner. He discussed not getting approades with me, yes."
- (1) "You didn't think it was a grievance?"
- A.) "I didn't think it was a griessmeat so, not it that time."

(page 39.)

ELEVENTH STATEMENT: SECTION V. (FALSIFICATION OF ABSENCE CONTROL RECORDS.)

The following paragraph is from

Edward G. Colby, EVERYTHING YOU ALMAYS MANTED TO KNOW ABOUT THE LAW, Drake Pub., Inc., New York, 1972, (page 116.)

"WHAT DUTY IS OWED BY THE EMPLOYER TO THE EMPLOYEES!"

"The amployer is legally obligated to jurnish a saje place for the employee to work and to provide for his safety. The employer must warn his employees of conditions under which he is employed which are liable to result in disease. A Federal Court ruleds Blindness and loss of health in one employed to gauge and measure sheets of polished steel under brilliant lights and under unhealthful conditions are occupational diseases which the employer is responsible for."

Plaintiff-Appellant alleges that the Defendant New York Telephone Company did not provide him with personiption safety glasses from about Harch of 1979 until Harch on April of 1971, during February and Harch of 1972, and During Harch, April, Hay, June and July of 1973. In early Harch of 1970 some employees emptled Plaintiff-Appellant's locker equating his plasses to become tost, and by the defendant's own admission they replaced these glasses with "plain-nonpersoniption glasses" which caused the Plaintiff-Appellant to become unconscious on the job on several occasions during 1970, 1971, February and Sarch of 1972, and from Harch through July of 1975.

Funther. Plaintiff-Appellant alleges that management employees of the Pelendant New York Telephone Company took no action whatsoever to correct the "conduct" of those employees who tied him with wire in 1971 and again in 1975 -- causing his plasses to become damaged on broken. Plaintiif-Appellant also claims that while he was on the 4-, evening work tour he either wore notor cycle goggles or no glasses at all nather than wear non-personiption plasses (and) for these skift assignments on or about the late Spring of 1971 prior to the strike (and) for about 12 months following the strike in 1972 and 1973 his pay necords will corroborate no headaches or dizziness. and no lateness on absence. Further. Plaintiff-Appellant provs that any absence, not of which occurred in 1970, resulting from Defendant Telephone Company's policy to force the Plaintiff-Appellant to wear non personiption work glasses must be considered an absence issulting from an "occupational disease" (and) must also be "medically excused." And finally. Plaintiff-Appeliant alleges he was not put on steps until he made formal applications to positions declared by the Company to be for either "women only" or in the case of Communications Consultant for "WASP males only." And since the Company did not put the Plaintiff-Appellant on absence central steps in 1970 \$ 1971, when the absence occurred, the Aupervisor had no right to take such action in 1975 when the Plaintlif-Appellant applied for transfer and or advancement.

ELEVENTH STATEMENT: SECTION VI. (VIOLATION OF PLAINTIFF-APPELLANT'S SENIORITY RIGHTS
BECAUSE OF HIS SEX AND OR RELIGION.)

The Defendant How York Telephone Company has already conceded that prior to November of 1972 Business Representatives and or Special Representatives were women only (and) that the Company did not hire "males" into these positions. Further, the Defendant Telephone Company has also conceded that prior to November of 1972 the Plaintiff-Appellant submitted letters and or requests for either of these two positions but was denied a transfer and or upgrade at that time because he was a "male" seeking a "jemale job."

Furthermore, in one of the AFFIRSTTIVE ACTION BOOKLETS submitted by the Defendant New York Telephone Company to the Federal Fastern District Court as an Exhibit, under the section of the Booklet titled "GOALS AND TAISETS" (which the Defendant New York Telephone Company submitted to EEOC on an about May 18, 1975 (on approval) they show the followings "Inside office clarical skitted positions (including Buringss Representative and Special Representative) to be 1.79 Nale as of January 1975 — with an "utimate goal" 259 male. Thus, either of these two positions given to women only paior to 1975 mere available family the Presentative Appellant should have been considered for these two

positions before the Defendant Telephone Company hired new-male employees from outside the Company. The Plaintiff-Appellant made a proper request for each of these two positions between the and of the Fall Semester of 1972 and prior to his Spring Semester of 1973, which would be about January of 1975, (and) he was assigned a permanent shift for the Spring Semester of 1973 in lieu of transfer to one of the two positions previously assigned only to women. And when the shift was changed in March of 1973 again the Plaintiff - Appellant requested transfer to Business Representative on advancement to Special Representative. And both requests were desired by his supervisor.

The Plaintiff-Appellant also requested an upgrade and transfer to Installer in the Manhattan area (and) believed he was qualified since he had earned a score of ninety—three per cent on the Lineman-Installer exam in 1970 (and) he was originally hired as a Lineman in 1970. Plaintiff-Appellant was "downgraded to Frameman" in 1970 because he complained that his eye condition made it impossible for him to climb telephone poles! Plaintiff - Appellant prays that there are no telephone poles in Manhattan! And thus he was indeed capable of doing the job. It is also a policy of the Defendant Telephone Company to provide the exployee with whatever training is necessary to do the job (and) this is salignized to in their employment literature.

During the time Plaintiff-Appellant was employed by the Defendant New York Telephone. Company many upgrades and transfers were made available to other Framewan Within Plaintiff-Appellant's department and this is corroborated in the following testimony: Fee-cross page 305 lines 15--171

A.) "No, I couldn't. There has been a lot of transfers and upgrades in the area and I really couldn't say honestly who was there at the time." (Pertaining to the time of the first of two wire tying incidents.)

ELEVENTH STATEMENT. SECTION VII.

EXCEPTION TO THE FEDERAL EASTERN VISTRICTES COURT'S RULING ON TUITION REPLAND. With regard to nonpayment of Company tuition reinbursement Plaintiff-Appellant alleges the following:

- 1) He did not receive \$97.50 tuition refund for courses taken at Hassau Community College during the Summer of 1970, Fall of 1970, and for "Home Study—Independent Study" courses which he enrolled in on or about the Fall Semester of 1970 and completed on or about April or Hay of 1972.
- 2) Plaintlif-Appellant submitted a tuition rejund application to his foreman, in. William Hadden, at or about the end of the Summer of 1976 for an "Oral Communication"

course successfully completed during Summer I 1970, and a "Business Ungenization I hanagement" course successfully completed during Summer II of 1970. Plaintiff—
Appellant was entitled to receive a refund 46 \$39.00 for these courses — which he still has not received and which the Defendant Telephone Company refuses to pay.

- 3) On or about January 1971 the Viaintiff-Appellant submitted another inition refund application to Mr. Madden requesting reimbursement for the two courses successfully completed during the Summer of 1970, and an additional refund of \$19.50 for another course which he successfully completed during the Fall Sementer of 1970 which he still has not received and which the Defendant Telephone Company still fefuses to pay.
- 4) On or about the beginning of May 1972 the Piaintiff-Appellant submitted another application for tuition reinbursement to Mr. Michel with the following explanations
 - (a) application for \$58.50 for courses taken during 1970; (and)
 - (b) additional application for Independent Study Courses in Economics and Business Law ensolled in the Fall of 1970 and completed on or about the and of April beginning of May of 1972 -- reimbursement amount of \$39.00.
- 5) Plaintiff-Appellant altages that he successfully completed all the above mentioned courses (and) ALL of the above courses were accepted towards his Bachelor of And Degree at Hofstra University, towards his Bachelor of Ants Degree at Adelphi University, and towards his Bachelor of Science Degree at the State University of New York. And all applications for any part of the \$97.50 in refunds which Plaintiff—

(page 42.)

Appellant is seeking reimbursement for were submitted to the Defendant New York
Telephone Company within 50 days after completion of the courses (and) Ali of the
above courses were approved under the terms and conditions of the Company's tuition
reimbursement plans Since the Plan provides that the Company will rejurd for all
courses accepted toward an Associate or Bachelor Degree.

- bursement Policy (and) as for the Company's policy not to pay refund for CORRESPONDENCE COURSES, Plaintiff-Appellant alleges he had permission to register for INDEPENDENT STUDY COURSES (from his foreman) because of the need to change his permanent day shift hours in or about the beginning of 1971. And as for refund applications for these "Independent Study Courses," a timely and proper application was filed with Plaintiff-Appellant's supervisor, in. Wichel, within a month after these courses were completed—(and) this application was filed on or about May 1971.
- 1) As to Mr. Michel's denial of refund for "CORRESPONDENCE COURSES," Plaintiff-Appellant will show that this denial was illegal and improper (since) when his shift was changed during the Spring Semester of 1975 the Plaintiff-Appellant unde extangements to con-

plate doe of his courses on an independent study basis (and) necessed refund for those courses on on about August of 1975.

With regard to courses taken at Hofstra University during 1972 and 1973 white the Plaintiff-Appellant was employed by the Defendant New York Telephone Company, the Plaintiff-Appellant alleges he attended college classes during the following semesters (and) during the following "Refund Periods."

REFUND PERSON	SEMESTERS	AMOUNT OF REFUND PAID
1971 1972	Summer I '72; Eummer II '72	up to \$1000.00 per year
1972 1973	Fall '71; Spring '73	up to \$1000.00 per year

The Dejendant How York Telephone Company has scipulated, (please see) Edelstein—cross page 253 Lines 18 through 20, by Hr. Scheians "It is a ject, is it not, that you neceived something like \$1,600 on \$1,500 in rejunds from the Company." And on page 234 of the same Federal Eastern Vistrict Court Trial Transcript Index No. 74 C 499, Nr. Scheier scipulates in lines 18 through 11 that this rejund of one-thousand and six hundre; or so delians was paid to the Plaintiff-appellant All during 1975——On or about February and August of 1975.

Sandinuse on following page of militar Applied Brief.

Plaintiff-Appallant alleges that "Tuition Rejund Pariods" are from September of one year to September of the following year, to include the Fall Semester of the calquiar year (and) the Spring and Summer Semesters of the following aslendar year. The amount of tuition rejund per semester is based on half the cost of tuition paid by an exploser up to the first six-hundred dollars paid per semester (and) full refund for balance of tuition payment over six hundred dollars per semester upon successful ampletion of the courses. **THE TOTAL RETHERMSEMENT TAID PER TUITION REPRESENT IS NEVER HORE THAN ONE-THOUSAND POLICES.

The Plaintiff-Appellant neceived more than one-thousand dollars during the 19721975 only because the refunds from the two Summer Sessions, Summer I 1972 & Summer II '72,
were not received until August of 1973; And this point is conceded by Nr. Scheler on
page 251 of the Federal Eastern District Court Trial Transcript -- lines 16 through 180

Q.) "And only two of them were delayed for any substantial measure, and those were the mes taken for the Summer of '727"

Plaintiff-Appellant's Applications were filed on time and properly submitted to his supervisor, it. Higher, but were not neinbursed until about a full year lattery (and) as this lesse the Plaintiff-Appellant concedes that the Union did help, (but) not until

the Plaintiff-Appallant sought help from the A.C.L.U. on on about the and of June on the baginning of July 1973.

The Plaintiff-Appellant also takes EXCEPTION to the Federal Eastern District Court's ruling found on page 352 of the trial transcript lines 16 through 12; which reads as follows: "He was paid additional amounts for having completed a course when in fact he didn't complete the course." And with regard to this ruling by the Federal Eastern District Court, the Plaintiff-Appellant wishes to bring to the attention of the Second Circul Court of Appeals that this alteged "additional payment" was for a course that the Plaintiff Appellant was jorged to drop during the Spring Semester of 1975 following the changing of the Plaintiff-Appellant's permanent 4-12pm shift by the Defendant New York Telephone Compray--- Although Defendant Telephone Company had previously given the Plaintiff-Appellant permission to work such a permanent 4-12pm shift universally for the entire Spaing '73 senseter so that he could attend college during pre-scheduled oil duty hours. Thus, this so called "additional payment" of tuition rejund was paid to the Flaintiff-Appellant because the Defendant Telephone Company conceded to the Union and to the A.C.L.U. that the change in Plaintiff-Appellant's "Permanent Shift" MANNESSEE was a BREACH OF CONTRACT.

Furthermore, regardless of the fact that the Defendant Telephone Company paid the

(page 44.)

Plaintifi-Appellant the tuition neimbursement for nounces successfully completed at Kofstra University -- the issue to be naised on this Appeal is that of the <u>sub-</u>
<u>stantial delay</u> of about a full year before payment was made. Plaintiff-Appellant alleges that he required the tuition reimbursement from his past semesters in order to annoti for courses the following semesters and therefore a delay in Euclion reimbursement for such a substantial measure of time as a full year limited the number of credits Plaintiff-Appellant could efford to enroll for -- (and) thus limited his changes of future advancement to any management positions including Communications
Consultant which required 120 academic credits.

ELEVENTH STATEMENT: SECTION VIII. SUNARY GRIEVANCE.

The PERLUCLES - Appellant presented a SUMARY GRIEVANCE to Mr. Myors on an about Appell of 1973 (and) this is connoborated in the following testimony: Myors -- cross -- from page 498 line 22 through page 499 line 161

Q.) "Bid you get a summy grievance from Mark?
THE UTTHESS: "Your Monor, can I explain what a summy grievance is?"
THE COURTS "V. v."

- Q.) "I just ment to know Li you got Lt."
- A.) "I got it."
 "To you want to know what it is?"
- Q.) "Pld you get Let"
- A.) "yes."
- Q.) "Was it connect as to date and subject matter?"
- A.) "yes."
- Q.) "Completely!"
- A.) "I would have to say yes, but, you know-"
- Q.1 "You're not sure?"
- A.) "I'm not positive."

Plaintiff-Appellant alleges under eath that the above SWARY GRIEVANCE included the followings

- A) Page one: Photostat of the Permanent Shift Contract signed by Hr. Hickel on or about the beginning of January 1973 for the Spring Semester of 1973.
- 3) Page 2001 A typed letter charging "Prejudice" and including the following issues:
 - 1) violations of shift agreement
 - 2) PERSINIENT speaker assignments (and) <u>traditional</u> job assignments

(page 45.)

- Il tocher prant, first wiretying incident, and safety glasses. (etc.)
- 4) Seniority violations including written request for Business Representative, and verbal requests for Special Representative (and or) Commissications Consultant.
- 5) Tuition rejunds including nonpayment jor\$17.50 reintursament for courses successfully completed at Nassau Community College (and) a request for a yelevance for reinbursament for accessfully completed at Nojetra University during Summer I '72 and Summer II '72.
- 6) Rotating shifts verbal suggestions that when jobs are assigned to rotational tours of duty (and) the Company requires a cottege education for advancement to centain jobs errangements should be made so that these craftsmen are able to attend cottege classes either days or evenings Plaintiff-Appellant
- Police Department (and) in. Hyers said he would check into it.
- 7) Actempted forced mesignation by Mr. Michel following charge of shift.

- C) Fages these, four, and fives Thoto copy of April *12 letter to the Freelant Carnishael with following underlined grievances lates explained verbally in person.):
 - 5) Plaintiff-Appellant had completed 129 college credits and was seeking a seniority anievence for advancement to commutentials consultant.
 - 1) Overtime assignments mithout pay (for which there was a grievance on or about the end of June of 1973 But such grievance stopped at Step one.)
 - 10) Harassment because of Plaintiff-Appellant's Religion (for which there was also a Step one grievance on on about June 27, 1973 and that grievance also was not continued beyond step one).
 - 11) Permanent Speaker assignments
 - 12) Request for Business Representative and or Special Bales Representative.
 - 13) Locker and first wire incident -- headaches and dissy spells.
 - (4) Second step prievence against other inion members.
 - 15) Earlier permanent thijt contracts
 - 16) 1971 denial of transfer to Business Representative (or) univanesment to Special Representative -- (verbal request for scriptity univanes for CONSULTANT.)
- 9) Page size April 18, 1872 answer to above latter to Corrobonate its authenticity.

(page 46)

Plaintiff - Appellant's REQUEST FOR GRIEVANCE FOR SENIORITY ADVANCEMENT:

Plaintiff - Appellant's REQUEST FOR GRIEVANCE FOR SENIORITY ADVANCEMENT:

Plaintiff-Appellant ashs that this Court planse read the following testimony:

WERS -- VINECT -- page 478 Lines 9 through 16:

A.) "And as far as the <u>Special Sales Representative</u>, that's a job that's outside of our jurisdiction as a local. It's a definite upgrade and it's a higher rate of pay then anybody we represent and it comes under the commercial union, I believe. And we have nothing to do with any kind of upgrade in that area."

with regard to the above Restinary by the three, the original question asked by the Ostole stants or page 473 line 25 -- And the Hyers was asked about "what subject matters hash brought to his attention during various Estaphone enversations" --- And with regard to the above testimany the Plaintiff-Appallant alleges that the Plaintiff-Appallant made alleges that the Hyers answer classic indicates that the Plaintiff-Appallant made several requests for several requests for several prevently pricounters for advancement to positions within the Company and for which the Defendant Union did not callege these decembers.

PLAINTIFF — APPELLANT ALLEGES THAT IF THERE WAS AN OPENING IN THE COMPANY
FOR ANY POSITION FOR WHICH THE PLAINTIFF — APPELLANT WAS QUALIFIED THAT THE UNION
MOULD HAVE A DEFINITE OBLIGATION TO REPRESENT AIM IN SUCH A GRIEVANCE. FURTHERHORE,
MR. LYERS' REFUGAL TO REPRESENT THE PLAINTIFF — APPELLANT IN SUCH A GRIEVANCE WAS
A BREACK OF THE COLLECTIVE BARGAINING AGREEMENT. THE PLAINTIFF — APPELLANT PAID
WEEKLY WHICH DUES TO C.W.A. LOCAL 1164 FOR ABOUT THREE YEARS, AND IN 1973 THERE
WERE OPENING FOR "HEM-MALE MIRES" AS SPECIAL REPRESENTATIVE WHICH WAS A DEFINITE
UPGRADE AND THE PREDECESSOR TO COMMUNICATIONS CONSULTANT AS IS CORROBORATED BY THE
FOLLOWING TESTINOHY:

Highel -- cross -- page 18 Lines 6 through Els

- (.) "Did you say that the sales position, whether it be a special representative or communications consultant, that it was a job reserved for women?"
- A.) "Communications consultant was a job hald predominantly by men."
- (.) "Whene do these min come from!"
- A.) "Throughout the installation and repairs."
- (.) "Is that a management enacts job on a management job?"
- A.) "I believe that is a management job."
- Q.) "A management job!"

(page 47.)

Hichel - cross - continued (page 18 Lines 18-21)

- () "What is a special separamentative?"
- A.) "A special representative is a predecessor to that." (predecessor to Communications Consultant.)
- A.) "It is the highest paid enest job there is."

The above testinony by in. Michel corroborates Plaintiff-Appellant's claim that Communications Consultants were promoted out of anaft positions including an "Installan" on a "openial Representative" (and) the Plaintiff-Appellant has established that he cabmitted appeals and transfer applications for each of these two positions. Furthermore, since other anaftsmen had previously been promoted out of anafts and into either the Special Representative position (or) the Communications Consultant positiony the tesion was therefore obligated to represent the Plaintiff-Appellant in a seniority grievance to see that he was given the same consideration. Special Representatives belong to the Communication Consultants are Management employees of the Dijendant Telephone Communications Consultants are Management employees of the Dijendant Telephone Communications Consultants are Management employees of the Dijendant Telephone Communications Consultants.

would not represent a Special Representative on Commitaation Consultant in A prievance. However, C.S.A. Local 1104 would be required to represent a linear member-a engineer-applying for either of those positions (and) being bypassed for appraise and transfer.

with regard to approach and transfers each employee was allowed to submit the upgrade and transfer applications at the same time (and) Plaintiff-Appellant alleges that he submitted the following application to his supervisor, Mr. Michels

On on about January of 1973 the Plaintiff-Appellant applied for either Business
Representative on Special Sales Representative and was assigned a permanent 4-12 pm
evening shift in lieu of either a transfer or advancement.

On or about March of 1975 the Plaintiff-Appellant's Shift was changed (and) at about the same time he applied again for Business Representative or Special Representative or Special Representative. On or about March or April of 1975 the Plaintiff-Appellant also submitted an application for Communications Consultant, a management position, and this explication had nothing at all to do with the Upgrade Computer.

And on on about April or May the Plaintiff-Appellant withdrew his application for business representative and substituted an application for Installer in the Manhatta area in place of the application for Business Representative. And at the advise of

the productive displaying an experience and the following the content of displaying and the second of the content of the conte

(page 48.)

in. Hyers the Plaintiff-Appellant withdraw the Installar Application and submitted an application for Garage mechanic in the Massau County area because in. Hyers said he could persuade an installar in the New York area who mas not yet on top pay to maybe trade erafts and tocations with the Plaintiff-Appellant; since although top pay for the Installar position was higher them top pay for framewor, the progressions were about the same — And if an installar lived in the Nassau County area he might prefer to work out of Floral Park. (etc.) Hr. Hyers also advised the Plaintiff-Appellant that if he was willing to become a Garage Hachanic he could work a permanent Sym-lam evening shift and continue college during the day because most of the Company vehicles he would be doing work on were used between Sam and Sym. (The possibility of a Garage Hachanic transfer is correspondted by Hr. Hyer's testimony on page 477 times 8 - 11.)

Plaintiff-Appellant also asks the Court to please read the fellowing testimony by Mr. Michels MICHEL -- CROSS -- page 19 lines 5, 6, 15, and 16.

Q.) "How did Hr. Edelstein submit any applications for a change in fob to you?"

A.) "There is one for a Special Representative and this one is for a Garage He-

The above applications and another john for Committaelius Consultant were in file with the Company for the following time periods (and) by Mr. Michel's admission they were not processed through the apprade computers And with respect to this bypass of provocion no grievance was presented by the Defendant Union:

Special Representative: Harch '75 -- July '75; Garage Heahania: about Hay '75 -- July '73; (and) Communications Consultant: Harch on April '75 -- July '75.

Furthermore, the Plaintiff-Appellant alleges he learned that there were openings for Special Representatives from his foremen and supervisor (and) this is corroborated by the following testimony:

MICHEL - CROSS page 17 Lines 4 thaough 12s

THE WITHESS: "All the employees who wonked for me were shown the book at the time."

- Q.) "Ane you rejearing to this yellow book that is called the Equal Opportunity Book!"
- A.) "That's consect."
- 2.) "was this book distributed in the officet"
- A.) I There was a similian book to that that was distributed."

Plaintiff-Appellant been that certain positions had vacanties including the Special Representative position described in the Company's Equal Opportunity and Affirmative Assian Program Licenstone, but the Pafandone Telephone Company rejusts to annually his in an advangement and the Definition toler did not protess and

(page 49.)

grievanues pertaining to the above issues.

ELEVENTH STATEMENT: SECTION IX. "H" DAY ASSIGNMENTS AS A "PRESSURE MANIPULATION
BY THE PEPENDANT TELEPHONE COMPANY TO FORCE PLAINTIFF-APPELLANT
TO RESIGN.

with regard to and vi "N" day job assignments the Plaintiff-Appellant alleges:

- 1) The letter "N" in "H day" mans the employee does not work on a weekday and his bast way of the work week would thus be a Saturday instead of Friday.
- 1) It is the <u>usual</u> policy of the Defendant Telephone Company to assign Central Office Framemon to Seturday "N" day assignments on a <u>socutional basis</u>, about once even; six to eight weeks.
- 3) The Plaintifi-Appallant aliages that the Defendent Totaphono Company ussigned him to work almost every Saturday for the months of April, Hay, and June 1973, [and] during the Spring of 1973 the Plaintiff-Appallant was assigned to work Saturday "!" days every week except for two three week periods when he was assigned to six Spacker Covering on the 1-9pm shift; And with regard to this aways agains: the Defendant Tolephone Company, the Defendant's Exhibit D-EE, Plaintiff-Appallant's research including pay records, and other mitnesses testimony that consubstants the Plaintiff-Appallant's abance.

4) Plaintiff-Appellant alleges that the Defendant did not ustign him to work on Saturday paior to the change in his permanent 4-18 shift which was in or about hanch of 1979; (and) following the change in the Plaintiff-Appellant's work schedule, the SATURDAY ASSIGNMENTS, with a day off during the week, were assigned to him because the Defendant Telephone Company knew this was against the Plaintiff-Appellant's religious beliefs (and) they keped these Saturday assignments could be used as a mans to pressure the Plaintiff-Appellant to resign.

These Saturday assignments are correborated in the following testimony: Edelstein -- cross -- page 1461 from Line one-- by Nr. Scheier.

- 4) "On occasions you worked on Saturday!"
- A.) "Yes."
- (b) "And you never requested it off?
- A.) "I would be fired if I took off. It is not alloced. If they say you work Saturday, I would work, I had no choice."

In. Scholer elso asked, "I the Plaintiff-Appellant was an "OSSERVANT JEW" and the Plaintiff-Appellant answered "No" because he believed that an "observant Jew" was an "Onthodox Jew" and the Plaintiff-Appellant is d'reformed Jew." The Plaintiff-Appellant did, in fact, complain to Hr. Highel (and) on or about June 17, 1973 he was represented in a "Step one Religious Prejudice Grievance" by Al Spaich, and following the grievance the Plaintiff-Appellant was assigned to rotational "H" days like everyone else. And this princence is corresponded in the following teathorny by Hr. Withele

loage 50.

Plaintiff-Appellant requests that the Court please read the following testimonys Michel -- direct -- by Ur. Scholar from page 3 line 13 through page 4 line 4.

- Q.) "in. Nichet, did In. Edelstein ever core into you, to the best of your recollection, to discuss grieveness or what would be described as grieveness?"
- A.) "I remember one incident when he came in. I don't remember the **MMHH** date, but, it was sometime after the strike was over. He was back on days and, I believe it was in April of 1973." "I am not sure of the date."

"He came in with a list of --

- Q.) "Was he with anybody?"
- A.) "He was with a shop steward."

"He was with two stewards, <u>Al Speich</u> and the other one, I believe was Carl Peterson, but I am not sure. He had a list of things -- " etc./etc.

The Plaintiff-Appellant alleges that on June 27, 1973 he was represented by Al Speich and another Shop Steward in an informal Step One "Prejudice Grievance," and the Plaintiff-Appellant is such of the date because his mather's former scenetary helped him to type the letter the night before the presented.

Furthermore, the data and authoritally of the above teller are connected on page 163 of the trial transcript, and the same teller appears as an exhibit to Plaintiff-Appellant's Mational Labor Relations Board Charge; And is also in the Plaintiff-Appellant's work folder submitted to the Federal Eastern District Court as Exhibit D-EE. Plaintiff-Appellant alleges that he also annexed a photostat copy of the "Sumary Grievance" he had previously submitted to im. Hyers (and) the following issues were resolved in this informal Step One Grievances

- 1) Plaintiff-Appellant no Longer was to be singled out to do "menial tasks" including tabeling cables on the Frame.
- !) Plaintiff-Appellant received payment for overtime worked on or about the past week, but this grievance was not carried over to "Step Two" for other prior weeks.
- 5) Following the June 11th Orievance the Plaintiff-Appellant was no longer assigned permanent "N" day coverage; And this was the most important part of the grievance.
- 4) He grievance was taken at Step One against other Union members -- And thus the issues concerning absence caused by headaches & dixty spells was forwarded to Pat Hyers by At Speich for a Step Two Grievance.
- B) Plaintiff-Appellant also asked for a grievence charging a VIGLATION OF CONTRACT, but Mr. Nichel said (in substance), "The Spring Semester is already over; there will be no more grievences today; Nark get out; the subject of grievences is closed." And this is accepted by Mr. Nichel in his testimony on p. 6 lines 15-18-

(page 51.)

The Plaintiff-Appellant also asks that the Count please examine the employee paynolic eards which are part the an Exhibit submitted to the Federal Restern District Court by the Defendant Telephone Company. And with regard to these records the Plaintiff-Appellant alleges the following:

- 1) From April of 1973 until July 14, 1973 top pay for Framemen was \$196.50 per week, and the Plaintiff-Appellant was on top pay at that time. The wage per
- A 8 hour day was \$39.50 unless an employee was assigned to a Saturday "N" day (and) if his work week ended on a Saturday instead of Friday, he would be paid an additional fifteen per cent differential pay for one day (or) \$39.50 X 158 * \$5.90 (and) his rate of pay for that week would be \$202.40 instead of \$196.50 denoting he worked on Saturday and was off one day during the week.
- 2) Record of Plaintiff MANNER Statements of Payroli from * 17 through * 19.

 [PAY PERIOD EMPING]

NUMBER	SATE SAULA	RATE OF PAY	TOUR ASSIGNMENT
17	4-21-75	202.40	"N" day Saturday
	4-28-75	202.40	"N" day Saturday

19 20 21	5-05-73 5-18-73 5-19-73	216.15 216.15 216.15	100 evening 1-4pm shift 100 evening 1-4pm shift 100 evening 1-4pm shift
22	5-24-75	: 202,40	"N" day Saturday
25	6-02-73	196.50	assigned two and one half hours overtime Saturday to complete Friday Visconnects.
24	: 6-09-78	202.40	"N" day Saturday
25 26	6-16-73 6-23-75	196.50 202.40	worked Honday & Tuesday; 5 day suspension. suspension continued into this week; (and) "N" day assignment for Wednesday.
27	6-30-73	196.50	(Step One Grievance) "N" day grievance / overtime grievance.
28	1-07-73 7-14-75	216.15 216.15	10% evening 1-9pm shift 10% evening 1-9pm shift
30	: 7-21-73 :	: pay increase : 210.00 / 231.00	evening 1-9pm shift
51	7-28-73	: 210.00 base pay	Seneduled for and paid to work Saturday "N" day, but reassigned to WondayFriday. etc.

SCHEPULED TO WORK HONDAY -- FRIDAY ONLY WITTL WEEK EMPING AUGUST 25, 1973 (and that was the last date posted on the official work schedule).

The Plaintiff-Appellant is not able to locate his pay records beyond April \$1, 1975; But the above record does indicate that he was assigned either to 1-9pm evening shifts of 8-5pm "N" day shifts and such shift assignment was discriminatory.

ELEVENTH STATEMENT SECTION X. (OVERTUR ASSIGNMENTS).

The Plaintiff-Appellant asks the Court to please read the following testimony describing <u>FORCED OVERFINE ASSISTMENTS</u> by the Defendant New York Telephone Company <u>MITHOUT PAY</u> (and) the Defendant C.W.A. Local 1104 is also charged with not providing the Plaintiff-Appellant with adequate representation with regard to the above issue:

This is not so much a request for overtime money -- The Plaintiff-Appellant is NOT asking for money for overtime worked. He is merely showing that this non-payment of overtime was one of the discriminatory acts by the Defendant New York Telephone Company; And showing a course of conduct or attitude toward the Plaintiff-Appellant because of his religion and / or his shift assignments on a mon-rotational basis in lieu of transfers or advancement to positions dominated by mostly women which were assigned to permanent day shifts, and which would have enabled the Plaintiff-Appellant to continue his college education full time evenings. The Plaintiff-Appellant alleges that his Foreman, Mill Nadden, was able to FORCE him to work overtime hours with-out pay as one of the "conditions" required to bold a permanent

shift assignment without trading on a job which would otherwise be assigned to retating shift assignments. The Plaintiff-Appellant alleges that his Poreman would assign him cortain work — And All the work had to be finished if the Plaintiff-Appellant wanted to continue on his permanent 4-12pm assignment in 1972 & 1973 (or) else this shift might be changed in the middle of a semester and the Plaintiff-Appellant would be forced to drop his classes.

The Plaintiff-Appellant asks that the Court please read the following testimony from the Federal Rastern District Court Trial Transcript: Edelstein -- cross -- page 281 lines 7 through 13.

- 0.) "And you testified you worked slot of overtime, didn't you?"
- A.) "Yec."
- 0.) "You didn't report this overtime or make any claim of it?"
- A.) "It was the foremen who forced me to work the overtime or loose the shift." (referring to the 1972-73 permanent 4-12pm shift.)

Edelstein - direct - page 15 lines 16 through 21.

Edelstein -- page 15 linus 16 through 21 -- direct continue().

- Q.) "What time were your hours then?" (referring to about 1970.)
- A.) "Right to five. However, I had to occasionally work overtime and not be paid."
- (.) "You mean you worked overtime and you were not paid overtime?"
 "Is that it?"
- A.) "That's correct."

The above testimony refers to a time period from approximately the end of March 1970 until about the beginning of 1971, during which time the Plaintiff-Appellant was assigned to permanent day shifts for the purpose of allowing him to continue his college education evenings at Manuau Community College. The Plaintiff-Appellant alloges that he attended Massau Community College during Susmer I, Susmer II, and the Fall Squaeters of 1970; And was assigned to a parameter day shift at the Floral Park Control Office so a Speakerman. The Plaintiff-Appellant did not attend college during the Spring Seasoter 1970 because on or about Penguary or March of 1970 he was scheduled to attend Frame Training Glasses for about 2 weeks on a 4-12 shift and this

would have conflicted with college. However, the Plaintiff-Appellant was assigned to permanent days for old other weeks during 1970 (and) this is correborated by the Plainties petient's pay records showing no differential for this time paried the submitted as part of Defondent Subibit D-EE. (records). It is the Plaintiff-Appellant's claim that as a "Speakermen" he worked with the Test Sureau (and) the test deskman worked past Spm and wetil Spm in 1970 -- And the Plaintiff-Appellant's foremen insisted that if the Plaintiff-Appellant was in the middle of a job with a test deckman and it was Sym (in substance) "that the Plaintiff-Appollant should finish with whatever that desiman was testing and not 'rush out at exactly Spm' or else he would have to rotate shifts like everyone else." The Plaintiff-Appellant alleges that this overtime was discriminatory because other Framemon who were assigned to work overtime were paid for such services (and) because other job assignments, including Assiness Representatives and Systal ed to women only makil lake Movember 1972, and conceded by the Defendants -- requested by the Plaintiff-Appellant on numerous occasions prior to 1973, were as signed to permanent 9am-5pm shifter Not requiring entre hours to hold a permanent shift.

Following the Fall Semester of 1979 the Plaintiff-Appellant
van not able to register for the Spring Semester of 1971 because
the excess overtime hours were beginning to conflict with his
college schedule — And instead of registering for the Spring
Semester of 1971 he enrolled in "Independent Study Courses" through
the State University of New York, and these courses were successfully
completed on or about April or May of 1972 — some time following the
strike. On July 28, 1975, the Plaintiff-Appellant testified to this
at the United States Pederal Sestern District Court as follows:

Edelstein -- direct -- page 21 lines 3 through 19:

- Q.) "Now, did you register for school in January of 1971?"
- A.) "No, I did not."
- 0.) "May not?"
- A.) "Well, because instead of putting in the extra time, approximately twice a month, this became a regular basis, <u>several times a weak</u>, and I was affraid I would be late for school. And I was told by the foreman that I was on the parament speaker coverage, permanent days. And if it was almost 5 o'clock and I was still working with

a deak man, I would have to stay latter and not leave the deak man.

And sometimes I was on hold for an hour."

MR. SCHEIER: "What periods is he referring to?"
THE WITNESS: "1979, 1971."

The Plaintiff-Appellant also makes reference to registering the Home Study Courses because he was forced to work past 5pm on page 214 of the Federal Eastern District Court Trial Transcript, Index No. 74-0-439, lines 21 & 22, (and) page 215 of the same transcript line 1. And on page 187 of the same transcript the Plaintiff-Appellant describes in lines 21 and 22 that this overtime assignment without pay was sometimes as much as eight to twelve hours per week. And this testimony is referring to the time period bedween approximately April 1972 until about March of 1973, during which time the Plaintiff-Appellant was assigned to a permanent 4-12pm shift. Furthermore, the Plaintiff-Appellant alleges that the Shop Steward, Jerry Pos, was also assigned to the 4-12 p.m. shift during 1972 & 1973 (and) on page 385 of the Federal Bastern District Court Trial Transcript, lines 2 through 6, Mr. Fee corroborates that during 1972 and 1973 that he was also assigned to the 4-12pm shiftwith regard to the preceeding explanation, the Plaintiff-Appallant withes to show that most of the excess work was assigned to him during the 1972-1973 personent 4-12 shift (and) this was within the statutory puried of 189 days prior to filing his charge with EEOC on August 8, 1973.

The Plaintiff-Appellant alleges that he and Jerry Fee often stayed past 12pm to run in new lines; (and) that Jerry Fee was either paid for this overtime (or) allowed to leave early, but the Plaintiff-Appellant was assigned to the speaker work (and) had to always work on the speaker with a destman until 12pm, and therefore was never allowed to heave early. The Plaintiff-Appellant also alleges that his pay records for 1972 & 1973 will corroborate that the Plaintiff-Appellant was only paid 37 and 1/2 hrs. per week for which he was assigned to work the 4-12pm tour --- and this is (also) corroborated by the following testimons, by Jery Fee, Fee--cross, on pages 419 line 13 through page 420 line 18:

2.) "So it's not really precion to have one man do it on the vertical and the same man do it on the horisontal?" (referring to running in new lines / by the 4-12pm 'run in orew')

- A.) "No, it's not practical."
- Q.) "So you need two men on that job, don't you?"
- A.) "Yes."
- O.) "Now, is it a rule of the Company or that shop before the night mon leave all the work must be completed, which means it has to be run through, connected, soldsred, right?"
- A.) "That is true."
- q.) "hre you allowed to leave at midnight if the work is not completed?"
- A.) "Your tour is from four to twelve. If the work is not completed you can zerve at 12 o'clock."
- Q.) "Did you over work overtime?"
- A.) "Did I ever work overtime? Yes."
- Q.) "Md you got paid for it?"
- A.) "Yes."
- Q. DID MARK WORK OVERTIME?"
- A.) "NICASIONALLY."

(continued on following page.)

Fee-cross continued from page 420 lines 16 through 18:

G.) "Did you ever see him (Mark) work overtime regardless of whether he was paid or not?"

A.) "I HAVE SEEN HOL WORK OVEREINE"."

With regard to the above testinony the Plaintiff-Appellant alleges that on many occasions he and Jorry Fee both were asked by the Foreman, Bill Madden, to stay post midnight to complete running in new lines, but that only Jerry Pas received payment for this work in 1972 and 1973. And the Plaintiff-Appellant suggests that the Court ask the Defendant New York Polaphone Company to produce the pay records for Jerry Fee from 1972 & 1973. and those records will indicate just how much overtime the Plaintiff-Appellant was not paid for: Purthermore, the Plaintiff-Appellant alleges that he was also assigned other work such as disconnects - requiring only one person -- and that these discrements (left over from the day erow) amounted to about five additional overtime hours per week on a regular basis. The Plaintiff-Appellant alleges that he worked about \$19,000.00 overtime assignments without pay in order to keep his permunent shifts, and he was only paid overtime for one week on or about the end of June '73 to a result of a Step One Union Orievenes (and) that the Defendant C.W.A.

Local 1104 ignored the Plaintiff-Appellant's requests to process this to a Step Two Grievance for overtime worked during 1972 & 1973.

Purthermore, the Flaintiff-Appellant's pay records for the 1973 year within the 180 day statutory period indicate the following: The Plaintiff-Appellant carned about \$7710.00 From January 1, 1973 until July 30, 1973; And the Defendants have already conceded that about \$1600.00 of this was for tuition refund and not veges. (Reference: 74 0 439 transcript page 233lines 18 through 20.) And the Plaintiff-Appellant's wago statements indicat at lergt \$400.00 was paid for evening or Saturday "N" day differential, and payroll statement # 27 indicates about two-hundred dollars overtime for the Step One Grievances presented June 27, 1973 by Al Speich. Thus, during 1973 the Plaintiff-Appellant worked about 31 weeks and not counting the tuition refunds received in February and August of '73, differential, and grievance for overtime for one week in Jame '73; The Plaintiff-Appellant's vages were about \$5500.00. Three of the thirty-one weeks worked in 1973 can be made ecountable to one day off to visit the Plaintiff-Appellant's Grandmother

60

who was on the critical list at Interborrow General Mospital, one day alloyed Grandsother AVOL, and three Gays suspension for alleged AVOLS seven days additional suspension -- which the Plaintiff-Appellant will explain in more detail in the ELEVENTH STATEMENT SECTION XI. PART B.: (and) about two days off during the Spring of '73 when the Plaintiff-Appellant had headaches and dissy spells from wearing non-persoription safety glasses (and) could not report to work. etc / etc. Plaintiff-Appellant's base pay from January until July 14, 1973 was \$196.50 -top pay for Presence prior to the new contract - (and) if you divide \$5300.00 by \$196.50, you got 28 -- (or) 31 weeks less about 15 days. or 3 weeks off; Proving that the Plaintiff-Appellant was discriminated against by not being paid any of the overtime he was assigned to work during 1973. (*Similiar calculations could also be made for 1979, '71, and '72, proving that although the Plaintiff-Appellant was assigned overtime, so were all Francisco in the Floral Park Central Office, the Plaintiff-Appollant was the saly francoun not to be paid for such

overtimes and the Plaintiff-Appellant believos this was either become
of his religion and or his requests for jobs gives to women only pric
to 1973 for which he was assigned parameter shifts per semester in liof such transfer requests — and or (perhaps) these extra assignments
were really a "Pressure Nami; Alation" by Tolephone Company Namagement
to force the Plaintiff-Appellant to resign because of his religion.)

ELEVENTA STATEMENTA SECTION SIL SUMESAU EMILA-

on or about the middle of March of 1973 the Pinistiff-Appellant was taken off the 4-12pm shift and scheduled to work "portunent appear or / permanent 1-9pm." On or about a Pharminy of the first week of the Plaintiff-Appellant's new shift, the Plaintiff-Appellant received a phone call informing him that his Grandmother was on the critical lie at Interperson General Hospital (and) the Plaintiff-Appellant requested personal time off without pay until the end of the week from his new forman, Prank Bove. The Plaintiff-Appellant advised Mr. Bove the visiting hours at the hospital were 2pm - 3pm (and) that those week the only hours he could now hid Grandmother, and those hours conflict with his 1-9 pm work shift.

ELEVENTH STATEMENT: SECTION XI. PART A. GRANDMOTHER INCIDENT:

Mr. Bove immediately accused the Plaintiff-Appellant of inventing the Grandmother Incident because of the change is the Plaintiff-Appellant's permanent 4-12 shift (and) the conflict between his work and college schedules—And refused to give the Plaintiff-Appellant any time off. The Plaintiff-Appellant was asked by Mr. Bove to wait in the break room and at about 7pm Mr. Bove got the ship staward, Stanley Malinaki, and Mr. Bove directed the Plaintiff-Appellant and Molinaki to go into Mr. Michel's office (and) Mr. Bove reported back to the Frame.

This was not a grievence — it was a request for personal time off.

And this is corroborated by Molinski's testimony on pages 440, 441, & 442

of the portion of the U.S Bastern District trial transcript prepared by

Marry Rapaport; (and) in Mr. Michel's testimony taken from the portion of
the minutes prepared by Artie From on pages 29 through 34.

The Plaintiff-Appellant also alleges that on the following Friday ho phoned in before Sam and requested and received permission from Mr. Nove to report back to work Madday -- And when he did report back to work the following Monday the supervisor, not realizing what the foremen had given the Plaintiff-Appellant permission to remain out a second day, suspended the

Plaintiff-Appellant for three days — the following Manday, Tuesday, and Wednesday. The Plaintiff-Appellant does not know the exact date of the alleged AMOL (Absent Without Leave), but on page 34 of the U.S. Eastern District Court Trial Transcript, Index No. 74 C 438, lines 16 5 17, Nr. Michel shows the date to be 3/16/73.

However, it is not the date of the suspension that the FlaintiffAppellant is concerned with in this Appeal. The Defendant Telephone Company
has conceded that the suspension was a punishment for being absent for only
one day — And the suspension was for an entire three days. And the Plaintiff-Appellant feels this was an extremely harsh punishment since he had
no prior lateness except for Medically commed absence for headaches and
dissiness caused by non-perscription safety glasses—and no absence at all
for the prior year he held the permanent 4-12 pm shift, furthurses, the
Plaintiff-Appellant believed that the foresan had given him permission to
remain out (and) he requested his shop stowards to represent him in such a
grievance — and by their own admission the Union refused to represent the
Plaintiff-Appellant, as is corroborated in the following testimony.

(page 59.)

One of the shop stewards, Jerry Fee, describes the entire Grandmother Incident in the U.S. Testern District Court Trial Transcript from pages 365 through 372 -- and swears that he was present throughout the entire conversation (Seference page 365 lines 22 & 23; page 366 line 1). However, it has already been corroborated by the other vitaesses, including Molinski & Michel, that the Plaintiff-Appellant was on a 1-90% shift; and on page 30 of Mr. Michel's testimony, lines 10 through 12, Mr. Michel corroborates the time of the request for personal time off to be about Two o'clock, and on page 385 of Jerry Fee's testimony, lines 2 through 6, Mr. Fee concedes that during the time of the first grievance he was assigned to the 4-12 evening whift (and) was see even in the building at the time the Plaintiff-Appellant requested personal time off. And furthermore, on page 369 of the transcript Mr. Fee concedes that he "didn't know how long the Plaintiff-Appellant was suspended for -- he was not in on that (Reference p. 369 lines 10 & 11).

The Plaintiff-Appellant also make the Court to read the following testimony, which he considers to be an admission of non-representations

Pos - Strack page 371 lines 11 through 16:

- C.) "And did you take that case any further than Step One?"
- A.) "No."
- 0.) "my not?"
- A.) "Cause it was closr, open and she; case. He was insubordisate and that was it."

The Plaintiff-Appellant allegee that both Fee and Holineki failed to present his grievance, documented the grievance at Stop has as the reason for suspension "Employee insubordinate," and forwarded the grievance to the Union, as is corresponded by the following testimony:

Molinaki -- direct -- page 443 lines 20, 21, 4 22 (and) page 444 lines 1 through 5:

- Q.) "And what was the result of that grievance meeting?"
- A.) "IT WAS DENIED AT PIRET STEP."
- Q.) "that was dealed?"
- 3: The grievence."
- A.) "We forwarded it to the Union for the second step."

with regard to the Grandsother Incident the Plaintiff-Appellant was given to believe that his foreman allowed him a second day off to visit his Grandsother in the Hospital; And (in any case) the Plaintiff-Appellant believes that three days off vithout pay was an entremely severe punishment for being absent only one day. Furthermore, the Plaintiff-Appellant didn't receive payment for the time spekt in grievance, including about an hour for which he was made to sit in the break room and wait for his shop steward although the Plaintiff-Appellant made proper and timely requests for Union representation, his Shop Stewards demied him any grievances at Step One — And the Union refused to process his grievances to Step Two.

ELEVENTH STATEMENT: SECTION XI. PART 8:

THERE SUPPRISIONS FOR WHICH THE NEW FOREMAN, FRANK BOVE, ALLEGES THE FLAINTIFF APPELLANT WAS INSUBSCILLAR AND OR RECURSING TO MORK.

The Plaintiff-Appellant alleges that Mr. Bove was not his foremen until about March of 1973, and prior to that time the Plaintiff-Appellant had never been suspended. Furthermore, the Plaintiff-Appellant alleges that he never refused to do work in the entire three years he was employed by the Defendant New York Telephone Company. (The Plaintiff-Appellant asks the

Court to please send the following testimony):

Bove -- cross page 105 lines 8 through 16:

- Q.) "When he came to you at that time did you form an opinion of the what kind of character Mark was?"
- A.) "At what time?"
- Q.) "March of 1973."
- A.) "Did I form an opinion, yes."
- Q.) "Did he annoy the devil out of you?"
- A.) "He did annoy me with some of the things he did, but I ignored him."

The Plaintiff-Appellant asks that the Court also please read Mr. Hove't testimony on page 105, lines 2 through 5, and lines 12 through 21; And asks that this testimony be considered indicate that Mr. Hove did become aggravated with the Plaintiff-Appellant -- And especially please consider lines 12 through 21 to circumstantially show Mr. Howe's "attitude" and quick temper. Furthermore, the Plaintiff-Appellant alleges that on each of the occasions when the foreman, Frank Hove, suspended him, he lost his temper and referred to the Plaintiff-Appellant as a "Useless Jev Hastard" (and)

this to correspond by spicing policies tourismy (pages 465-467).

Continued from promoding pages-2000-Cross-Sage 105 from Line 10

- 0.) "MA you over become numbered with them?"
- A.) "Hark?"
- Q.) "Yes or no?"
- A.)""Yen."
- Q.) "Do you like him?"
- A.) "Do I like him as a person?"
- Q.) "Yes."
- A.) "I can take him or leave him."
- Q.) "You haven't answered my question. Do you like him?"
- A.) "NO.

NO. I DUN'T.

DO I LIKE HIM TO WHAT?

DO I LIKE TO HOLD HIS HANDS?"

with regard to the enspensions for which the Plaintiff-Appellawi is charged by Mr. Bove with "refusing to work," the Plaintiff-Appellant alleges the following: First, there is a question as to "Trans Language." Or "telephone Company Language." That is to say, in order to understand MRY the Plaintiff-Appellant was suspended we must first be given two plan-

1) PESALAS BACK THE WIRES!

Public back the vires is a ROUTINE performed by the Speaker at the Florel Park Frame from about Sam until 8:30 am while the speaker is slow. It complete of PUSHING the frame vires back on the horizontal side of the Frame (and) can easily be done by one person alone.

(yrom About 3:30 mm until about 9:00 o'clock most of the men have a About Coffee break (and) then move on to other routines;

2) TIMES IN WINES!

Applied in wires is not at all the same as pushing back wires. Nunning & error connections consists of running a wire from the horizontal column say which side of the frame to the verticle pair cable side of the frame, and usually requires two men — especially when the pair and cable is above the balcony level. etc / etc.

The Plaintiff-Appoilant alleges that the job he was suspended for not register to perform was RUNKING CROSS CONNECTIONS; And he was not re-

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STATE WAS A STATE OF THE PARTY OF THE STATE OF THE STATE

COLUMN SIBLE CONTIENT

(page 62.)

another Francoun to assist him in running cross cornections requiring more than one man to perform that job function. The Plaintiff-Appellant adviced Mr. Sove that because of his eye condition it was physically impossible for him to run in cross connections to the balesay level by himself. The Plaintiff-Appellant advised the foremen that because of the headach's and dissine spoils from non-perscription "plain-glasses" that he feared this work would endanger his health or safety -- And he asked for a grievance. Both the Fran Poreman and a shop steward advised the Plaintiff-Appellant that Company-Union propedure was to first do the work and then have a grievance - Sut the Plaintiff-Appellant advised the Poresan and the Shop Steward that he considered this work to be physically impossible unless the Company agreed to either allow him to year motor cycle goggles (or) provide him with perscription safety glasses. Furthermore, the Plaintiff-Appellant said he would agree to either run in the wires if another worker would catch them, or he would be willing to catch the wires if the Foreman would assign another worker to run the wires from the column and switch -- But the job was mak impossible for the Plaintiff-Appellant to do clone.

The Plaintiff-Appellant does not know the exact dates of the first tro suspensions, but the Defendants have conceded that the first two suspensions were some time on or about the end of Harch or the beginning of April of 1973 - And with regard to the first suspension - the Plaintiff-Appellant was suspended for six and one half hours (and) that establishes the time at 9:30 am or during the second routine -- the running of wires / not pushing wires back as the charge states. Furthermore, the third suspension is also cogroborated as a "cross Connection Suspension" by the Plaintiff-Appellant's pay records #'s 25 & 26. Indicating that the Plaintiff-Appellant was suspend at about Emile 4:45pm on the Passday afternoon of the week ending 6/16/73; and remained out of work for five full days -- Wednesday, Thursday, (and) Friday of that week, and Handay and Tuesday of the following week. The Plaintiff-Appellant was also savigned to an "N" day Wednesday of the week ending 6/23/73, and he reported back to work on or about Thursday 6/21/73.

Grievances at first step were demied for all three suspensions (and) the Defendant C.N.A. Local 1104 did not process the grievances to Step Two.

ELEVENTH STATEMENT: SECTION XII. FORCED RESIGNATION:

The Plaintiff-Appellant alleges that July 30, 1973 was the last day he was employed by the Defendant New York T. Lephone Company -- And at about 9:10am that Monday marning the Plaintiff-Appellant (again) complained to his Foreman, Mr. Sove that he was sick -- he was having a headache and or dirry spell from the "plain glasses" the Company required him to year; And he feered for his health and safety.... The Plaintiff-Appellant requested a grievance against those Union vorkers who tied him with wire in May of 1973 (and) asked to be allowed to see his own eye doctor to purchase perscription glasses. etc / etc. Instend of allowing the Plaintiff-Appellant to see as age doctor, Mr. Bove directed the Plaintiff-Appellant to either take the B & S position -- which was a downgrade entailing cleaning the floors and men's room -- or to be suspended for 10 days pending dismissal. The foreman advised the Plaintiff-Appellant he could not present a drievance against any other Union member. (and) he could be downgraded either because he was physically not able to do the job of Francoson, (or) he could be assigned any lower craft so long

as he still received Francisks's pay and the only position the Flaintis Appatlant, or any other Jow, would advance to so long as he (Mr. Bove) was a foreman with the New York Tolephone Company was "Men's Room Attention (or) P.L.O. of the France."

The Plaintiff-Appellant walked off the job that day thinking he had just been fired in a very degrading swamer — And the letter referred to by the Defendant New York Telephone Company (as) the Plaintiff-Appellant "Letter of Resignation" was written under durant (and) constraint by the Shop Steverds Molinski and fac who also advised the Plaintiff-Appellant to write such a letter — And not to include any charges against other Union camber (or) class he would not be represented by the Union in any hearings to be reinstated to his job. etc. Futhermore, the Plaintiff-Appellant wishes to point out to the Court that the letter states that the Plaintiff-Appellant "had no other choice but to resign" (and) that he was "forced to resign," AND the Flaintiff-Appellant believed that he was being fired by Mr. How on Nanday, July 30, 1973.

(page 64.)

PHELVETH STATEMENT: AGENCY: PART A.) NEW YORK TELEPHONE COGNANY

on page 523 of the U.S. Federal Sactorn District Court Trial Transcript, Index No. 74 C 439, lines I through 5, Mr. Michel testified that he came to the Floral Park Central Office as a Supervisor in March of '71 (and) remained there since. And on page 522 of the same transcript Mr. Michel testified as follows: Michel-direct p. 522 lines 2 through 9: BY NR. SCHEISR:

- 0.) "Mr. Michel, can you give us your mosit on and responsibilities with the Telephone Company?"
- A.) "Central Office supervisor of the Floral Park building. I AM HESPON-SIBLE FOR THE EMPTHE TELEPHONE COMPANY OFFICE WORK MITHIN THAT BUILD-ING."

that Mr. Michel is responsible for the conduct and or actions of the Plaintiff-Appellant's foremen and or other craftsmen in the building -- And on two occasions when the Plaintiff-Appellant complained to Mr. Michel that other employees had tied him with Frame wire (and) had made remarks against his religion (and) had broken the Plaintiff-Appellant's safety glasses -- Mr. Michel did not take any steps to correct the conduct of these other Telephone Company employees, (and) on about two occasions when the Plaintiff-Telephone Company employees, (and) on about two occasions when the Plain-

tiff-appellant asked for time off for becauses and dissy spells because his Foremen forced him to year "plain-glasses," he was either document as a non-medically excused absence (or) on occasions when these non perscription glasses caused the Plaintiff-Appellant to pase out, he was documented as sleeping on the job. Furthermore, the Plaintiff-Appellant requested transfers to Business Representative prior to 1973 and or advancement to Special Representative on several occasions during 1973 because either of those positions were assigned to non-rotating work tours and did not require safety glasses (and) these transfer and advancement applications were denied because these positions were dominated by female employees.

The Defendant Telephone Company has also conceded that until about late Movember of 1972 (prior to the 1973 Affirmative Action Program), they followed a policy or strategy of manipulation of ethnic, racial, and sexual divisions within its work force (and) a policy of custom of illegal and discriminatory divisions between "Kinds of Morkers" and "levels" of work with some positions assigned to women only and other positions by males.

(page 65.)

THELVETH STATEMENT: AGENCY: PART B.) C.W.A. LOCAL 1104:

Index No. 74 C 439, Mr. Fee testified that he has served as an elected shop steward at the Floral Park Central Office for the past five continuous years.

And on page 439 of the same trial transcript Stanley Molinski testified that he has served as a Chief Shop Steward for the past five continuous years including 1972 (and) 1973. etc / etc.

On page 472 of the same transcript Mr. Myers also testified that he is the vice President of C.W.A.Local 1104, and (lines 15 & 16) his primary function is to MANDLE GRIZVANCES. And that he has held this position since 1963 working directly under the supervision of the President of the Local.

with regard to the above testimony the Plaintiff-Appellant alleges
that the shop stowards and or officers of C.W.A. Local 1104 either provided
mo assistance in the Flaintiff-Appellant's grievances or inadequate representation in the following issues:

- t) Siure and remarks against the Plaintiff-Appellant's religion by other workers and or management persons no representation Stanley Molinski said the men veren't responsible for remarks made while "horsing around" or when they are angry: And this was corroborated in his testimony. etc.
- 2) WIRE TYING INCIDENTS: The Union maintained that a "complaint" against other union members could not be presented as a griefmance. The Plaintiff-Appellant believes that following management's refuseal to take any steps to correct the conduct and actions of the other Union members who tied him with wire that the Union had an obligation to become involved.
- 3) Permanent Speaker assignments -- no grievance.
- 4) The Union did assist the Plaintiff-Appellant in obtaining permanent shift assignments for one semoster at a time or per shift contract, but when the Plaintiff-Appellant's shift was changed during the middle of his Spring '73 semester the Union demied the grievance at Step One (and) did not follow up on the Plaintiff-Appellant's request for another position or transfer to another Central Office.
- 5) FALSIFICATION OF RECORDS-SAFETY GLASSES ISSUE-not presented as a grievance because the Plaintiff-Appellant's "Complaint" was also against other Union members.

- 6) Semiority Grievances: Although the Telephone Company provided the Plaintiff-Appellant with an upgrade and transfer form for Special Representative, and allowed him to take a test for Communications Consultant -- for which he obtained a score of 97%, the Sefendant Union refused to provide representati for advancement to either of these two positions.
- 7) None of the issues that the Plaintiff-Appellant outlined in his Sumary Grievance to Mr. Myers were presented at Step Two Grievance level.
- 3) Issues presented by A! Speich at the Step One Grievance were not followed up on by Myers at Step Two Grievance Proceedings.
- 9) The Plaintiff-Appellant elleges that he was suspended without Union representation by Mr. Bove (and) Union representation for these issues was not provided until the Plaintiff-Appellant returned EXUM TO work following the suspensions And these grievances were dealed at Step One by Molinski and Pee, (and) forwarded to Mr. Myers, who ignored them at Step Two. And this is corroborated in the testimony of all the Union officials etc. etc.
- 19) Pollowing the "FORCED RESIGNATION" by Mr. Bove the Plaintiff-Appellant requested Union representation (and) ALE requests for such representation were ignored.

with regard to the above susary of grievances the Plaintiff-Appellant alleges that the Union and it's Shop Stewards and or Officers have an obligation to represent all members of the Union fairly - And if one member complains to the Union that other Union members tied him with wire or harassed him because of his religious belief that this is a grievance, (and) the Union must represent him with regard to such issues. Furthermore, the Plaintiff-Appellant does not feel it is fair that because other Union member tied him with wire on two occasions and caused his perscription safety glasses to become damaged or broken that he should be denied advancement solely on the basis that he had absence caused by the Defendant Telephone Company forcing him to year non-perscription plain glasses. The Plaintiff-Appellant believes that the Defendant Telephone Company had an obligation to replace the perscription glasses so that the Plaintiff-Appellant could properly and safely perform his job, (and) the Defendant Union had an obligation to provide the Plaintiff with a grievence for harassment to force his resignation (and) unsat verking conditions that were or might be harmful to his bealth.

CELTIN PIGER PHOTENIA

(page 67.)

THISTEENTH STATEMENT'S RECORD OF PLAINTIFF-APPELLANT'S COLLEGE EDUCATION.

Prior to 1970: 75 credits Academy of Aeronautics

1970-1972: 15 credits Nassau Community College

1972-1973: 42 cradita Bafetra University

The Plaintiff-Appellant alleges that he also prepared portfolios for assessment in art, photography, and advertising during the Pall and Spring Seventers at Hofstra University (1972-1973), but because of the change in the Plaintiff-Appellant's permanent work schedule, he was not able to have these assessments until a latter date; The Plaintiff-Appellant had an art assessment in 1975 and received 5 additional academic credits, but has not yet been able to schedule or pay for the assessments in photography and advertising.

The Plaintiff-Appellant was also studying for the GRADUATE RECORD EXAM and had planned to take that exam during the Spring Semester of 1973, but could not take the exam (again) because of the change in his shift. The Plaintiff-Appellant also alleges that had he taken the GRE TEST, he would have emberred graduate school on or about the Pall of 1973.

GRADUATE RECORD EXAM -- BREAKDOWN OF CREDET LEVEL!

(39 academic credits)

12 credits elementary level

12 credits above elementary level

15 credits advanced level

(The Plaintiff-Appellant alleges that because of the change of shift, denial of upgrade and or advancement (and) lack of Unioh representative with regard to this issue, and loss of his job — The Plaintiff-Appellant could not pay special assessment fees, take the GRE Test, pay to have his Bachelor of Science Degree processed (or) apply to graduate schools. The Plaintiff-Appellant alleges that he remained out of college from about 1973 until the Summer Semester of 1975 — and — when he did return to college he completed courses towards a second Bachelor Degree rather than graduate courses.)

Suring the Summer '75, Pall '75, and Spring '76 Semesters the Plaintiff-Appellant received TAP Awards (and) Bronner & Bernstein Awards, and ABLE Grants from Adelphi University and returned to college evenings and completed 42 additional undergraduate college credits. etc / etc.

(page 68.)

POURTEENTH STATEMENT: JOBS AND PAY SCALES.

On page 228 of the trial transcript Mr. Scheler stipulated that the framemon was making \$210.90 per week as of 7-15-73. And on July 19th, 1974 the framemon's pay was raised to \$232.50 — And that was "top pay." And the Plaintiff-Appellant also applied for positions with the Defendant Telephone Company on or about Pebruary 1973, September of 1974, and May 1976; And Obtained the following pay scales:

Zantiniana Zafa Antonia	<u>7-15-73</u> m-Spm Honday-F	riday)	\$233.00	plus cost of livin
35	hours per week			protection increas
PRAMEMAN (Sam-Spec	Homoday-Priday)	40 hours per	week.	
PRAMERAN	\$210.00	\$232.59	\$260.00	\$284.50
GARAGE MECHANIC	221.00	244.50	279.59	236.90
(Plus 10% Spectars)	243.10	263.95	297.55	325.60**
Installer	248.00	\$276:50	305.00	333.00

With regard to the Enter of pay for the above craft positions, since the increases represent "cost of living protection increases" (and) the Plaintiff-Appellant is allowed to receive "interest" on back pay as part of any settlement this Court feels he is entitled (etc.); Any settlement should be based on the most recent pay scales — as the Plaintiff-Appellant's top pay has increased from \$210.00 per week to \$284.00 because of the yearly cost of living protection increases — And that increase does not include any advancement the Plaintiff-Appellant could have received during the past three years since he lost his job on July 30, 1973.

The Plaintiff-Appellant was not given pay scales for Special Sales Representative (or) Communications Communication, but was given the following verbal imformation Suring interviews on or about May of 1976:

SPECIAL SALES REPRESENTATIVE: is the highest paid of any craft position within the Company (and) is paid about \$19-20,000.00 per year.

COMMICATIONS CONSULTANT: is a management sales position and applicants are required to have either a Machelor of Science or Bachelor of Arts Degree, or the equivalent (satisfactory completion of 120 academic credits). The interviewer also advised the Plaintiff-Appellant that the Company promotes Communications Consultants out of craft (etc.) and the pay is about \$26,000 per yr.

(page 69.)

With regard to upgrades or transfers the Plaintiff-Appellant alleges the following: Prior to 7-15-73 top pay for framemen was 195.50 per week (and) the Plaintiff-Appellant's pay records will corroborate that he reached top pay on or about January of 1973. Therefore, If the Plaintiff-Appellant was allowed to advance to Installer in Nanhattan on or about January 1973 he would have received a pay adjustment increase to one progression below top pay (and) If the Plaintiff-Appellant was allowed to advance to Special Sales Representative his pay would be adjusted to two progressions (or one year) below top pay. And each of these positions were assigned to day shifts so the Plaintiff-Appellant could continue his college education towards an MBA and Law Degree.

Furthermore, if the Union had represented the Plaintiff-Appellant in grie ances regarding the illegal change in work echedule and absences from non-perscription safety glasses, then the Plaintiff-Appellant could have also received an upgrade and transfer to Garage Mechanic on or about the end of April of 1973 or some time thereafter (or) a transfer to another

plant -- And he would have therefore reserved 10% differential for evenings and that would also represent an increase in pay. The Plaintiff-Appollant did not particularly want to become a Garage Mechanic, but the Vice President suggested he apply for Garage Mochanic because of his background in mechanics and auto restoration, and also because garage mechanics were assigned to Spm-lam evening shifts (and) the Plaintiff-Appellant could continue his education full time during the day. The Plaintiff-Appellant alleg that if the Union represented him in this transfer grievance he would have completed an MBA degree during the fall Semester of 1973 and Spring Semeste of 1974--- And he would have also submitted his name to the ungrade and transfer computer for advancement to either installer in Manhattan (or) Special Sales Representative in Massau County: And if he received either of these two ungrades he would have continued his college education in the evening. Furthermore, the Company exam for Installer is the same as the exam for Lineman, which the Plaintiff-Appellant took in 1970 and received a score of 93% (and) worked as a lineman for the first week he was hired e a Francean because he had difficulties climbing telephone poles because of his eye condition.

(page 70.)

· San Secretary

The Plaintiff-Appellant alleges that the Defendant Telephone Company hired new make employees as Special Sales Sepresentatives prior to July 30, 1973 -- And he had shows three years musiculty with the Company at that time. furthermore, the Plaintiff-Appellant had completed over 120 academic credits while he was amployed by the Company, and during the Spring Sessutor of 1979 if his parament whift contract for that semester had not been violated he would have sarned up to an additional ST college credits through Special Acsessment and the GET test given at Princeton University. Also the Vice Pregidenk of the C.W.A. Local 1704 advised the Plaintiff-Appellant that he could become a Sarage Membanic in Hassau County (or) an Installer in Manhattan. And on several occasions the Telephone Company had to advertise for Installers in the Manhattan area because there were not enough qualified manusciant applicants from within the Company applying for upgrades and transfer to Installer in that area. The Plaintiff-Appellant alleges that the Tologouse Company advertised for Installers in 1973 and again in 1974 -- And such advertisements said, "New York Tolephone teaches you all you need to know." The Platifif-Appellant alleges that he received a 33% on the Installer-Lincoln somm in 1970, and this is correburated on page 12 of the July 30, 1975 Trial Transcript, Index No. 74 C 499, (Lines 5 & 6), indicating the payrull title "270625" and a Linesan Class Letter The Plaintiff-Appellant alleges that he was bired so a Lineman in Sphrusty '70, and downgraded to Francian because he could not climb poles, but all his mil took occurs, work retings, and college education indicate that he should have advanced to one of the above mentioned positions -- And the Plaintiff-Appellant believes that because of his religion and or memorous requests for transfer or novementat to positions given to women only prior to late November of 1972 in the reason why he did not advance higher than Francisco. And in 1973 when these positions were evaluable to men also the Flaintiff-Appallant's Control Office supervisor arbitrarily and coprintously put him on "STEF S" although the Finis tier-appoilant had His absonou for the past year while he hold a personnet 4-13 evening shift and attended college full time dayer and this is corresponded by the Plaintiff-Appellant's pay records. The only Sheemee the Plaintiff-Appella bad during 1972 or 1973 (after the skrike) that was not medically consend was one day when he was accused of being ANGL (and) any other absences can be emplained by suspension days or about two days when the Finistics-Appellant cost not work because of bendaubes and disminess caused by non-persoription safety glaces which the Defendant Telephone Surpany forced the Plaintiff-Appellant to year after employees wither emptied the Finintiff-Appellant's locker (or) demograd his personiption sufety giasees while trying him with wire.

(page 71.)

This is a mail in equity authorized and instituted parament to fitte vit.

of the bot known as The Title Tiers are as 1964, 43 Sec. Species 2500e at eaq.

incorporated into the Title, resistant surperservers are 1971 providing for

injunction and sales rolled against religious see caused discrimination in

employment (and) providing that it shall be unimedal to fail to him or discharge as employee became of sex or religious (or) to limit, our organic, or

closely as employee sequence (or) to despite as employee of caplageant openicually balely because of our and or religion. And employee and or labor baless

may not cause or attack to influence amployees by unfair market labor promise

The Plaintiff-Appellant facis be has presented a prime facis case, and the has proved the matters in the complaint. Slure and remarks against his religion were correlated by the testimony of Stanley Rolinski (and) Jerry Pas correlated the locker incident and wire tring incidents. The Reference witnesses also correlates that the Plaintiff-Appellant was equipment to permit eat speaker analysment (and) this is clearly as invoce of engregating or clasifing within a job.

November of 1972 the Suprocentative positions were analysed to woman only. And these positions were assigned to personne day shifts which would have emphise to Visintiff-Appellant to attend solings full time evenings so that he could be examined in the future for a management position with the advantant Vispons Company. Several of the visconnes extraborated that the Flaintiff-Appellant was assigned personnent shifts so that he could attend college full time during the day at morptes iniversity during 1972 & 1973. And the Plaintiff-Appellant has shown that these shifts were in Lieu of transfer or advancement to other positions dominated by woman only write to 1972. And he has also proved that he was accommonly assigned to work overtime on that shift — as correct that he was accommonly assigned to work overtime on that shift — as correct as a Company Exhibit will corroborate that the Flaintiff-Appellant & pay remarks sainite as a Company Exhibit will corroborate that the Flaintiff-Appellant & pay remarks sainite as a Company Exhibit will corroborate that the Flaintiff-Appellant & Dalinves this was one of the many "Processes Samipulations" by the Sciences." Telephone Conyany to force his resignation because of his religion.

when the intendent Pelaphone Company changed the Plaintiff-Appellant's entre in the middle of the Spring Semester 1973, the Plaintiff-Appellant asked the A.C.L.V. for assistance (and) the Telephone Company conceded that the shift charge was a breach of contract, and refunded the full cost of the unities for the course the Plaintiff-Appellant was forced to drop. Also, following the

change in shift the Flainhiff-Appellant's Supervisor, Sr. Michel, who had directed the Flainhiff-Appellant's new foremen to change the shift, hold the Flainhiff-Appellant to "GUZT OCHSON OR QUZT THE JORY" No magher how much col-

lego he completed he would not advance because of his "Vertableses."

CARROLL STATE OF THE STATE OF T

The ficinal companies we have to make obtain the print of the print of

the statement - spellers presented where to provide a transfer applioutlaw to be. Make the presently rejected each and every application. his of count the applications to the country and transfer emultipe, and commoded in his continuous that he did not wroten these applications with the Plaintiff-Americant. The Vicintiff-American feets to the midtrarity and cappled mading decided administration for transplor by being put on "Shop 6" of the Cantago's Groomes Control Flore by Sr. Microl. Transpor. the Field adds Appollant was per to shape in 1979 (and) altreat all the alleged absorber were from head without and dimmy apollo, and and could promot prior to the strike in a "riced sanding Srievence" when the Cassay trice to fire the Plaintiff-Appellant for aliened elegance. The Plaintiff-Appellant had only Exist two electrons in 1072 & 1073, (most) those absorbes were coursed when the deletiff-spottack's occurs per of personsisting country places were because during the Spring *73 size tying incloses. The only other Lame respective and minorize one whom the Plaintiff-Agentiant was not physically able to run in cross covertions to the ballony look of the from because he was bester beneather and direy meals at that time, and feared that he might full and inform bimosif (w) otherwise came decays to his bouith or physical well-being - and both the formen (and) are sided communated that they are the Plaintiff-Apollois authorians on his back --- own

time; they preferred to decrease whose inclinate as "steeping" to protect the object framework and or strop atomics (and) a framework played a past in the vice inclinate and or larger inclinate. PEPPERSON URATEMENT: RETURNET (conclause).

The Antendant Pelephone Company was aware of the Figintiff-Associant 1 prior one operation when he was first bired in the baginning of February of 1970 -- And this is corresponded by the setendent's Schibit indicating a medical emmination by Telephone Company doctors on or about Rebraary 11 of 1070 (and) elecumptantially because the Plaintiff-Appellant was biged as a Marean County Moseows, but exald not climb telephone poles because of his prior eye operation lighting his range of vision. The Sefandamb Telephone Company was also made aware of the fact that the Fisintiff-Assellant must year only perscription matety glasses for work requiring matety classes. And the Plaintiff-Appellant also evaluined to management how his glasses had become either took or damaged in 1979, 1971, and 1973. Manufact the Flainkiff-Appellant alleges that on several secondons during 1970-73 he was formed to year "plain glasses" (and) those classes caused bin to have hendaches and dismy spells, and during the time period 1979-71 remain out of work for about 19 days because he was not able to leave his had without failing on the floor. In 1971 there was a prievance when the Company first tried to fire the Plaintiff-Aspellant, and the Plaintiff-Appellant was given a pair of woter cycle gaggles to weer and taken off stops. The Plaintiff-Appellant was given personiption glasses, but these glasses were damaged or broken during the Spring of 1971 and on or shout the Spring of 1973 when other Enion members tied him with wire. The Sufandant Union design the Plaintiff-Appellant orienance recreassiation on the issue of safety classes and sadically excused absence because (as is correborated by Stanier Molineti) the Plaintiff-Appellant was not allowed to present any prievances against other Union members. The Plaintiff-Appellant size phoned Fat Wrors, Mice President of C.W.A. Local 1194, and visited or. Myers at least two times, but none of his grievenous ware appealed to Second Step (and) must were desired by Molingki and Fee at the first step -- including the issues outlined by the Plaintiff-Appatient in his summer ariovance.

Counsel by the Spiendank Telephone Company's fallure to provide him with a safe place to week and / or PERSCRIPTION SAFETY GLASSES, which Mr. Method know the Plaintiff-Appellant record to safely and property parform his jet delice -- And may bendeshee or dismy spells or absumes or suspensions caused by the Spiendant Telephone Company's fallure to provide proper personal property planes (or) the Spiendant Telephone Company's fallure to provide proper personal time and the Plaintiff-Appellant reporting this lesses will be desirable to reporting the Plaintiff-Appellant reporting this lesses will definite to plaintiff Discussion Assumes to the Plaintiff-Appellant reporting this lesses will definite to fairlibrate to plaintiff.

The Flaintles- poeling from a has presented his came showing arts of decrimination because of his religion and or wer, and Tressure Comingstatime, " within the 18) may statuting pariod prior to filler his complaint with the (and) as for any acts, events, conduct, or discriminatory behavior price to this statutory period/sero bely presented as a francative to wild m chains a cause of conduct of the ofentants. The staintiff-homilant believed on hes presented a prima facte case, and asks the curt to wier a can be my injunction as the only come for securing a brought roller, and in addition to the actual owey imposes that by the plaintiff-occaliant because of the illegal acts of the Antendants, the Plaintiff-Appealant has suffered irrepairable injury from effectant felephone ompany's policy , practice, contro, asso, and classificative of "bale" and female" continua (and) discriminating against qualified persons own an the Plaintiff-Appellant with respect to see and or religion, and from the discriminatory results of much actions -- berefore, the slaintiff-appellant respectfully prayer A.) That the eferiant we then tolerance meany be directed and princes

- to restore the shartest expellent to his proper positive in the opening with the respect to the advancement be should have received had be resetted there. (and) it be personnelly enjoined from continuing or maintaining its policy, practice, caster, there is usage of denyton, existing, dishibiting, and therefore in with the rights of the language should be represented by the continuity of the language should be also of the language should be also of the language of the language should be also be al
- The the Plaintiff-Appellant be granted dapages from the effective for the top of the the series and religious projections (and). Procesure computations practiced against the Plaintiff-Appellant because of his sex and or religion, and leading up to his forced recipation on or about only 30, 1973; and that the effective the Plaintiff-Appellant bits for pay dapages for their failure to provide the Plaintiff-Appellant with the proper representation required to control the barasseent and discrimination against the Plaintiff-Appellant by conserved and or bereit to restore the Plaintiff-Appellant by conserved and or bereit to restore the Plaintiff-Appellant before to active members, and that the effection to active membership without possibly.

(exciosed on fall wing name.)

- from permitting other members of the Union and or the Commany from improperly or illogally making Simerimizatory ratings and or any other improper determinations equipment the Plaintiff-Appellant based on religious Functions rather than on Sorit.
- auffered including back pay with interest, estimated evertice vages, and also other benedice the Fisintiff-Appellent vould have received had allowed to not been combined from the employment of the effectant New York Telephone Company because of his sex and or religion. Furthernore, the Fisintiff-Appellant is also conting damages for my them of advancement in rank, title, and eager, and that the Court equate the loss of the Fisintiff-Appellant's being forced to remain out of school to the loss of future income suffered by the Fisintiff-Appellant by not being able to complete his education towards on Sia legree and or law legree until he is reinpendent with the effectant New York Palaphone Campany because he is dependent to his income to pay for collapse and he has hed NO income since he was forced to terminate his corner with the effectant Felephone Campany.
- 2.) That there be allowed to the Fleintiff-Appellent his costs including 1014.00 about to purchase the Federal Restern district Court Trial Transcript (and) responsible attorneys fees for counsel who represented the Flaintiff-Appellant from about April 15, 1074 until July 30, 1975; And any other relief that may appear to the Court optitable and just.

- 1.) Scools vs. The Conteville and Ashville Sailroads
- in 1944 the Courts rated that "the Unions are required to represent ALL its members in the unit fairly -- as was decided in the pre-history to Squal September Opportunity Law -- And since Steele, any worker unfairly represented by the Union responsible for Dargaining for his way has the right of action in the Courts.
- 2.) In the case of Warens weeks vs. The Fee lock Telephone Company, it use actabilished that there exists for degreeation of "anis" and "female" positions and Sm. weeks recolved Tox JOS, MACK SAV, DVSTIME, Plan Introduct.

 (The Plaintiff-Appollant is not an Attorney and make that the Court allow him to present other precedent cases during the seal argument portion of his Appeal if he is represented by counsel at that time.)

constants and pack and that his back pay include interest and that this interest include interest and that this interest include of the first procedure increases' received and 7-10-74, 1-3-75, and 3-5-70, as the staintiff-vanishme has meliculated by the fall of the columber.

- 1. Loss or difference of pay for a Wexness from Facerna to eliter complaint described a special exercistative for 10.) any pair to diller complaint duty of the 10.
- 2) provide by fix the evented Telephone Texang's event conjugation of the laboration provided by 2 years of years, and including the cost of living provided interests 1777.9).
- b) the value of cretain heredits that would be available to the statetics.

 Compliant if he were still exployed by the refer out on Verk Schooline aspany fixing in this in recent at the through solitare for year or the fattiving the position.

as the contrators of what is pay of the member of 2 ocess per year for an analytech sits trace that five years pervice (and) 1 posts per year for an analytech sits returned tive and that years service (as):

1076 - 1070 2 made with pay 4 2323.33 (Ext pay Subtailer)

\$975 - \$978 % Service etc.

1975 - 1977 3 Dewing etc.

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- Commission of the contract of

- The protection increase.
- of the staintiff-Appellant MER also teching decayes from the effectant c.m.A. Local 1104 in the meant of \$2,650.00 for decaying his grievence requests at Step and ignoring his grievences and "Smary Trievence" at "Step Two," (and) not providing the Plaintiff-Appellant with adequate representation, which could have prevented the afendant beinghous Company from forcing the Plaintiff-Appellant to resign his position with the Greenay, the above meant represents the value of the Plaintiff-Appellant's time and work in proceeding with this complaint without Union assistance as regain his position with the offendant New York Telephone Company.
- of the Flaintiff-appellant is seaking to be restored to his former position with the Defendant New York Celephone Company, and with full memiority from Formulary 1977, and because of his prior experience with the Company and cellege education be is seeking to be reinstated at the level of Company and Cellege (2023/2020) (and) to have his rate of pay adjusted appropriately, as may appear equitable and just to this Court.
- 10) The Plaintiff-Appellant strenged callage while working for the Gerdent New York Telephone Company, and paid about one third of his income toward education empaners. And if the offendant how York Tolephone Company did not presente and force the Flaintiff-Appellant to resign his position with the efendant Telephone Company, the Flaintiff-Appellant would have carned an Alla Degree Curing the Full Demester 1973, Spring Semester 1974. and Summer Somester 1974. And an corresponded by the Spuil 11, 1972 letter to Provident Ellinchaus, the Plaintiff-Appellant's future qual was to attend law school -- and the Plaintiff-Appellant alleges he would have outtimed his college education towards a law egree, (and) indicad could not amily to graduate schools because TECHNE without the salary incluse provided by his analogment with the Defendant Telephone Omegany, the Flaintiff has no many or resources to pay for such education; And therefore the Plaintiff-Appellant cats the Jourt to award dumages in the to amount of 18,400.00 for the loss of time in completing his education -equating such loss of time to the loss of Plaintiff-Appellant's future earning prential.

(page 70.) terk dichard Edeletein, being daly avors, disposes and nevit that he is the Plaintiff-Apprilant in this suit and potitioner hormins and that he has read the forgoing potition and the companie thereof, and that the same is true to his sen marriedge, except as to cause matters therein stated to be alleged to importation and belief (and) that as to those matters be believed then to be the truth. Mark Richard Editter bark debard Postatoin (cated) State of New York WEST M THEOLE euterribed and aroma to anta tuman ANITA KRUMAN NOTARY PUBLIC. STATE OF NEW YORK No. 30-4619776 Qual. in assay 77